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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1230

[No. LS-88-103]

Pork Promotion, Research, and Consumer Information

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule adopts with some modifications an interim final rule which amended regulations issued under the Pork Promotion, Research, and Consumer Information Order (Order). This final rule (1) revises the table which lists the Tariff Schedule of the United States (TSUS) numbers identifying imported pork and pork products subject to assessments under the Order to conform with a new numbering system—the Harmonized Tariff System (HTS) implemented by the U.S. Customs Service (USCS), and (2) includes a new table listing the HTS numbers of live porcine animals subject to assessment. This rule also incorporates a listing of the assessment amounts in cents per kilogram. These changes will facilitate the continued collection of assessments on imported porcine animals, pork, and pork products by USCS.

EFFECTIVE DATE: May 22, 1989.

ADDRESS: Ralph L. Tapp, Chief, Marketing Programs and Procurement Branch, Livestock and Seed Division, Agricultural Marketing Service; USDA, Room 2610-S, P.O. Box 96456, Washington, DC 20090-6456.

FOR FURTHER INFORMATION CONTACT: Ralph L. Tapp, Chief, Marketing Programs and Procurement Branch, (202) 447-2650.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under USDA procedures established to implement Executive Order No. 12291 and Departmental Regulation 1512-1 and is hereby classified as a nonmajor rule under the criteria contained therein.

This action has also been reviewed under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 et seq.). Many importers may be classified as small entities. This final rule merely (1) revises the table containing the numbers identifying imported pork and pork products listed in the table in § 1230.110 (53 FR 27478) in the regulations from the former TSUS numbers to the HTS numbers to conform with the USCS conversion to the new HTS, and lists the amount of assessment for each identified HTS number in cents per kilogram in addition to cents per pound and (2) includes a table listing HTS numbers of live porcine animals subject to assessment. In addition, the action will not impose any requirements on importers beyond those previously discussed in the September 5, 1986, issue of the **Federal Register** (51 FR 31898), when it was determined that the Order would not have a significant effect upon a substantial number of small entities. The conversion to the new HTS numbering system implemented by the USCS is merely a technical change and imposes no new requirements on the industry. Accordingly, the Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact upon a substantial number of small entities.

The Pork Promotion, Research, and Consumer Information Act of 1985 (7 U.S.C. 4801-4819) approved December 23, 1985, authorizes the establishment of a national pork promotion, research, and consumer information program. The program is funded by an assessment of 0.25 percent of the market value of live porcine animals sold in the United States and an equivalent amount on imported live porcine animals, pork, and pork products. The final Order establishing a pork promotion, research, and consumer information program was published in the September 5, 1986, issue of the **Federal Register** (51 FR 31898) and assessments began on November 1, 1986. The Order requires importers of live porcine animals to pay an amount equal to 0.25 percent of their market value, and importers or pork and pork products to pay an amount which represents 0.25 percent of the value of the live porcine animals from which the pork and pork products were derived, based upon the most recent annual seven-market average price for barrows and gilts, as published by the Department. Prior to the interim final rule published on December 29, 1988 (53 FR 52628), the assessment on imported pork and pork products was expressed in dollars per pound. In the interim final rule, the assessment was expressed in cents per pound rather than dollars to simplify and facilitate use of the table. The formula for converting the live animal equivalent of 0.25 percent of the value of the live animal to an assessment per pound is described in the supplementary information accompanying the Order and published in the September 5, 1986, issue of the **Federal Register** (51 FR 31901). The schedule of assessments is listed in a table in § 1230.110 of the regulations (53 FR 27478) for each type of pork and pork product identified by a TSUS number. Although TSUS numbers for imported live porcine animals did not appear in the table in § 1230.110 of the regulations (53 FR 27478), such animals were subject to assessment at a rate specified in § 1230.71 of the Order (7 CFR 1230.71). The TSUS numbers of live porcine animals subject to assessment under the Order were published in an issue of the Department of Treasury News, United States Customs Service dated September 26, 1986.

The USCS implemented a new numbering system, the Harmonized Commodity Description and Coding System, otherwise known as the Harmonized Tariff System (HTS), to replace the TSUS numbering system. The HTS numbering system became effective January 1, 1989, as part of the Omnibus Trade and Competitiveness Act of 1988 (Pub. L. 100-418, 102 Stat. 1107).

The purpose of this final rule is to revise the present table found under § 1230.110 of the regulations (53 FR 27478) to reflect the change from the TSUS numbering system listed therein to the HTS numbering system, list assessment amounts for imported pork and pork products in cents per kilogram, and to include the HTS numbers for live porcine animals. This revised table lists the HTS numbers for pork and pork products which conform to the

previously listed TSUS numbers. Additionally, a separate table lists the HTS numbers of imported live porcine animals subject to assessment. This change permits the USCS to collect assessments due on imported live porcine animals, pork, and pork products in conjunction with its regular importation processing and collection system.

The new HTS uses an 11-digit number to identify specific imports of live porcine animals, pork, and pork products compared with a 7-digit number used in the TSUS system. Under the HTS, some of the major TSUS categories for live porcine animals, pork, and pork products subject to assessment have been subdivided into new categories which have been assigned HTS numbers; other major TSUS categories remained unchanged but were renumbered with HTS numbers.

As a result of these changes from the TSUS system to the HTS, the 13 TSUS categories of pork and pork products listed in the table in § 1230.110 of the regulations (53 FR 27478) subject to assessment have been expanded to 27 HTS categories, and the one TSUS category for live porcine animals has been expanded to three HTS categories. The live porcine animals, pork, and pork products subject to assessment and the assessment remain unchanged.

A comparison of the new HTS numbers and the former TSUS numbers of live porcine animals, pork, and pork products subject to assessment under the Act and Order and a description of the type of pork, pork products, or porcine animals represented by correspondng new HTS numbers are shown in the following chart.

HTS No.	HTS article description	TSUS No.
Imported Live Porcine Animals:		
Live swine:		
0103.10.00004	Purebred breeding animals, Other.	100.0180
0103.91.00006	Weighing less than 50 kg each.	100.8500
0103.92.00005	Weighing 50 kg or more each.	100.8500
Imported Pork and Pork Products:		
Meat of swine, fresh, chilled, or frozen:		
0203.11.00002	Fresh or chilled: Carcasses and half-carcasses, Hams, shoulders and cuts thereof, with bone in.	106.4020
0203.12.10009	Processed	107.3020
0203.12.90002	Other	106.4020
0203.19.20000	Other: Processed	107.3060
0203.19.40006	Other	106.4020
0203.21.00000	Carcasses and half-carcasses, Hams, shoulders and cuts thereof, with bone in.	106.4020
0203.22.10007	Processed	107.3020
0203.22.90000	Other	106.4040
0203.29.20008	Other: Processed	107.3060
0203.29.40004	Other: Edible offal of bovine animals, swine, sheep, goats, horses, asses, mules or hinnies, fresh, chilled or frozen.	106.4040
0206.30.00006	Of swine, fresh or chilled.	106.8500
0206.41.00003	Of swine, frozen: Livers.	106.8500
0206.49.00005	Other: Meat and edible meat offal, salted, in brine, dried or smoked; edible flours and meals of meat or meat offal.	106.8500
0210.11.00003	Meat of swine: Hams, shoulders and cuts thereof, with bone in.	107.3020
0210.12.00208	Bellies (streaky) and cuts thereof: Bacon.	107.3040
0210.12.00404	Other	107.3040
0210.19.00005	Other: Sausages and similar products, or meat, meat offal or blood; food preparations based on these products.	107.3060
1601.00.20007	Pork: Other prepared or preserved meat, meat offal or blood: Of swine; Hams and cuts thereof Containing cereals or vegetables.	107.1000/ 107.1500
1602.41.20203	Other: Boned and cooked and packed in airtight containers In containers holding less than 1 kg.	107.3515/ 107.3525
1602.41.20409	Other	107.3515/ 107.3525
1602.41.90002	Other: Shoulders and cuts thereof: Boned and cooked and packed in airtight containers.	107.3020
1602.42.20202	In containers holding less than 1 kg.	107.3515/ 107.3525
1602.42.20408	Other	107.3515/ 107.3525
1602.42.40002	Other	107.3020
Other, including mixtures:		
1602.49.20009	Offal, Other: Not containing cereals or vegetables; Boned and cooked and packed in airtight containers.	107.3560/ 107.3540
1602.49.40005	Other	107.3060

Comments

The interim final rule requested comments from interested persons by January 30, 1989. The Department received only two comments—one from the Office of Trade Operations, USCS, Department of the Treasury and one from the Multilateral Trade Policy Affairs Division (MTPAD), FAS, USDA.

The USCS comment recommended that the cents-per-pound assessments listed in the table of assessments for imported pork and pork products in § 1230.110 also be expressed in cents-per-kilogram. The commentor pointed out that the "Unit of Quantity" for reporting purposes for covered products under the HTS is "kilogram." The commentor further stated that "kilogram" will be the unit in which quantities will be reported on USCS entry documents. "Pounds" will no longer be used. In the commentor's opinion, expressing rates only in cents-per-pound will cause confusion in the importing community, require more work in the preparation and verification of entry documents, and increase the probability of clerical errors. The Agency believes that the adoption of this recommendation would facilitate the computation, collection, and processing of assessments on imported pork and pork products. Accordingly, cents-per-kilogram has been included in the table of assessments for pork and pork products in § 1230.110 (7 CFR 1230.110) for each HTS number listed therein. To determine cents per kilogram, the cents-per-pound assessments are multiplied by a metric conversion factor 2.2046 and carried to the sixth decimal.

The other comment, submitted by the Foreign Agricultural Service, recommended certain changes in the chart contained in the Supplementary Information section on page 52627 of the interim final rule (53 FR 52627). That chart listed a comparison of the former TSUS numbers and the new corresponding HTS numbers along with

an HTS article description for live porcine animals and pork and pork products subject to assessment under the Act. It was the commentor's opinion that such changes were necessary to make the listed HTS numbers correctly conform to corresponding TSUS numbers. Based on a review of the latest available information on the conversion of TSUS numbers to HTS numbers, the Agency concurs with the recommended changes and has revised the applicable numbers in the chart that appears in this supplementary information section accordingly. The changes do not result in any deletions or additions to the list of HTS numbers published in the tables of import assessments for live porcine animals and pork and pork products contained in § 1230.110 on page 52628 of the interim final rule (53 FR 27628).

This final rule adopts with some modifications the provisions of the interim final rule. Such changes are to facilitate the application of the regulation. Accordingly, the interim final rule amending 7 CFR Part 1230 which was published at 53 FR 52626 on December 29, 1988, is adopted as a final rule with the following changes.

List of Subjects in 7 CFR Part 1230

Administrative practice and procedure, Advertising, Agricultural research, Marketing agreement, Meat and Meat products, Pork and pork products.

PART 1230—PORK PROMOTION, RESEARCH, AND CONSUMER INFORMATION

1. The authority citation for 7 CFR Part 1230 continues to read as follows:

Authority: 7 U.S.C. 4801–4819.

2. Amend Subpart B—Rules and Regulations, by revising § 1230.110 to read as follows:

§ 1230.110 Assessments on imported live porcine animals, pork, and pork products.

The following HTS categories of imported live porcine animals are subject to assessment at the rate specified.

Live porcine animals	Assessment
0103.10.00004	0.25 percent Customs Entered Value
0103.91.00006	0.25 percent Customs Entered Value
0103.92.00005	0.25 percent Customs Entered Value

The following HTS categories of pork and pork products are subject to assessment at the rate specified.

Pork and pork products	Assessment	
	Cents/lb	Cents/kg
0203.11.00002	.18	0.396828
0203.12.10009	.18	.396828
0203.12.90002	.18	.396828
0203.19.20000	.21	.462966
0203.19.40006	.18	.396828
0203.21.00000	.18	.396828
0203.22.10007	.18	.396828
0203.22.90000	.18	.396828
0203.29.20008	.21	.462966
0203.29.40004	.18	.396828
0206.30.00006	.18	.396828
0206.41.00003	.18	.396828
0206.49.00005	.18	.396828
0210.11.00003	.18	.396828
0210.12.00208	.19	.418874
0210.12.00404	.19	.418874
0210.19.00005	.21	.462966
1601.00.20007	.25	.551150
1602.41.20203	.28	.617288
1602.41.20409	.28	.617288
1602.41.90002	.18	.396828
1602.42.20202	.28	.617288
1602.42.20408	.28	.617288
1602.42.40002	.18	.396828
1602.49.20009	.25	.551150
1602.49.40005	.21	.462966

Done at Washington, DC, on April 17, 1989.

J. Patrick Boyle,

Administrator.

[FR Doc. 89-9501 Filed 4-19-89; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Part 1260

[No. LS-88-101]

Beef Promotion and Research

AGENCY: Agriculture Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule adopts with some modifications an interim final rule which amended the Beef Promotion and Research Order (Order) by (1) changing the Tariff Schedule of the United States (TSUS) numbers which identify imported cattle, beef, and beef products subject to assessments under the Order to conform with a new numbering system—the Harmonized Tariff System (HTS) to be implemented by the U.S. Customs Service (USCS); (2) expanding the table concerning the assessment rates for imported cattle, beef, and beef products to include four new categories for edible meat offal of bovine animals; and (3) clarifying the language pertaining to the expenses of the Cattlemen's Beef Promotion and Research Board (board). This final rule also incorporates a list of the assessment amounts for each HTS category in cents per kilogram. These changes will facilitate the continued collection by USCS of assessments on imported cattle and beef and beef products.

EFFECTIVE DATE: May 22, 1989.

ADDRESS: Ralph L. Tapp, Chief, Marketing Programs and Procurement Branch, Livestock and Seed Division, Agricultural Marketing Service; USDA, Room 2610–S, P.O. Box 96456, Washington, DC 20090–6456.

FOR FURTHER INFORMATION CONTACT: Ralph L. Tapp, Chief, Marketing Programs and Procurement Branch, (202) 447–2650.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under USDA procedures established to implement Executive Order No. 12291 and Departmental Regulation 1512–1, and is hereby classified as a nonmajor rule under the criteria contained therein.

This action was also reviewed under the Regulatory Flexibility Act (RFA), (5 U.S.C. 601 et seq.). Many importers may be classified as small entities. This final rule (1) revises the table containing the numbers identifying imported cattle, beef, and beef products listed in table 1260.172 in the Order (7 CFR 1260.172) from the former TSUS numbers to the HTS numbers to conform with the USCS conversion to the new HTS, (2) expands the table to include four new categories for edible meat offal of bovine animals, (3) clarifies the language pertaining to expenses of the board, and (4) lists assessment amounts for imported beef and beef products in cents per kilogram. Except for the second change, this action will not impose any requirements on importers beyond those previously discussed in the July 18, 1986, issue of the **Federal Register** (51 FR 26132) when it was determined that the Order would not have a significant effect upon a substantial number of small entities. The conversion to the new HTS numbering system implemented by the USCS on January 1, 1989, is merely a technical change and will impose no new requirements on the industry. It is estimated that the increase in total assessments collected on imports as a result of the change made in this final rule will be less than 1 percent over a 12-month period as a result of the new assessments. This impact will be minimal. Any additional costs will be outweighed by the benefits derived from the operations of the Beef Promotion and Research Program. The changes in the language pertaining to the expenses of the board are merely for clarification. Accordingly, the Administrator of the Agricultural Marketing Service has determined that this action will not have

a significant economic impact upon a substantial number of small entities.

The Beef Promotion and Research Act of 1985 (7 U.S.C. 2901 et seq.) approved December 23, 1985, authorizes the establishment of a national beef promotion and research program. The program is funded by a $1.00-per-head assessment on all cattle marketed in the United States and an equivalent amount of assessment on imported cattle, beef, and beef products. The final Order establishing a beef promotion and research program was published in the July 18, 1986, issue of the **Federal Register** (51 FR 26132) and assessments began on October 1, 1986. The Order requires importers of cattle to pay to the USCS, upon importation, an assessment of $1.00-per-head for cattle imported. Also importers of beef and beef products, which includes veal, must pay to the USCS, upon importation, an assessment equivalent to $1.00-per-head. As a matter of practicality, the assessment on imported beef and beef products is expressed in cents per pound for each type of such products. The formula for converting the live animal equivalent of $1.00-per-head to an assessment per pound is described in the supplementary information accompanying the Order and published in the July 18, 1986, issue of the **Federal Register** (51 FR 26136). The initial schedule of assessments is listed in a table in § 1260.172 (7 CFR 1260.172) of the Order for each type of beef and beef product identified by a TSUS number. Edible meat offal of bovine animals was not previously included in the list of TSUS numbers listed in the Order as subject to assessment upon importation. It is estimated that total assessments collected on imports will increase by less than 1 percent over a 12-month period as a result of these assessments.

The USCS has implemented a new numbering system, the Harmonized Commodity Description and Coding System, otherwise known as the Harmonized Tariff System (HTS), to replace the Tariff Schedule of the United States numbering system. The HTS numbering system became effective January 1, 1989, as part of the Omnibus Trade and Competitiveness Act of 1988 (Pub. L. 100-418, 102 Stat. 1107).

One of the purposes of this final rule is to revise the present table found under § 1260.172 (7 CFR 1260.172) of the Order to reflect the change from the TSUS numbering system listed therein to the HTS numbering system. This revised table lists (1) the HTS numbers for imported cattle, beef, and beef products which conform to the previously listed TSUS numbers and are subject to assessment under the Order, and (2) the HTS numbers for edible meat offal of bovine animals which were not identified under the previous TSUS numbering system but are subject to assessment under the Order and (3) assessment amounts for imported beef and beef products in cents per kilogram. This change permits the USCS to continue to collect assessments due on imported cattle, beef, and beef products already being assessed and begin collection of assessments due on edible meat offal of bovine animals in conjunction with its regular importation processing and collection system.

The new HTS system uses an 11-digit number to identify specific imports such as cattle, beef, or beef products compared with a 7-digit number used in the TSUS system. Under the HTS, some of the major TSUS categories for cattle, beef, and beef products subject to assessment have been subdivided, and the new categories have been assigned HTS numbers; other major TSUS categories remained unchanged but were renumbered with HTS numbers; and the veal category under the TSUS numbering system has been subdivided and renumbered with HTS numbers.

Under the TSUS system, edible beef offal was not identified by a specific TSUS number as were other types of beef and beef products. Consequently, edible beef offal was not included in the table in § 1260.172 (7 CFR 1260.172) of the Order for assessment purposes. However, under the new HTS, edible beef offal is identified by four separate HTS numbers. These numbers have been included in the revised table.

As a result of these changes from the TSUS system to the HTS system there are 8 categories which cover imported cattle subject to assessment compared with the previous 10 TSUS categories. The 16 TSUS categories of beef and beef products listed in the table in the Order subject to assessment have been expanded to 24 HTS categories and 2 subcategories. Four new categories have been added. The cattle, beef, and beef products subject to assessment and the assessment under the TSUS system remain unchanged. The four new categories will be assessed at a rate equivalent to $1.00-per-head according to the formula described in the supplementary information accompanying the Order and published in the July 18, 1986, issue of the **Federal Register** (51 FR 26136). The assessment rate is .20 cents per pound for each of the four new categories. The following chart lists a comparison of the new HTS numbers and the former TSUS numbers for imported cattle, beef, and beef products subject to assessment under the Act and Order.

HTS-Number	HTS-Article-Description	TSUS-Number
	Imported Live Cattle	
	Live bovine animals:	
	Purebred breeding animals:	
	Dairy:	
0102.10.00103	Male	100.0130
0102.10.00201	Female	100.0140
	Other:	
0102.10.00309	Male	100.0130
0102.10.00504	Female	100.0150
	Other:	
0102.90.20004	Cows imported specially for dairy purposes	100.5000
	Other:	
0102.90.40206	Weighing less than 90 kg each	100.4000/100.4300
0102.90.40402	Weighing 90 kg or more but less than 320 kg each	100.4500
0102.90.40607	Weighing 320 kg or more each	100.5300/100.5500
	Imported Beef and Beef Products	
	Meat of bovine animals, fresh or chilled:	
	Carcasses and half-carcasses:	
0201.10.00103	Veal	106.1080
0201.10.00906	Other	106.1020
	Other cuts with bone in:	
	Processed:	
0201.20.20009	High-quality beef cuts	107.6100

HTS-Number	HTS-Article-Description	TSUS-Number
0201.20.40005	Other	107.6200
0201.20.60000	Other	106.1020
	Boneless:	
	Processed:	
0201.30.20007	High-quality beef cuts	107.6100
0201.30.40003	Other	107.6200
0201.30.60008	Other	106.1060
	Meat of bovine animals, frozen:	
	Carcasses and half-carcasses:	
0202.10.00102	Veal	106.1080
0202.10.00905	Other	106.1040
	Other cuts with bone in:	
	Processed:	
0202.20.20008	High-quality beet cuts	107.6100
0202.20.40004	Other	107.6200
0202.20.60009	Other	106.1040
	Boneless:	
	Processed:	
0202.30.20006	High-quality beef cuts	107.6100
0202.30.40002	Other	107.5500/107.6200
0202.30.60007	Other	106.1060
	Edible offal of bovine animals, swine, sheep, goats, horses, asses, mules or hinnies, fresh, chilled, or frozen:	
0206.10.00000	Of bovine animals, fresh or chilled	na
	Of bovine animals, frozen:	
0206.21.00007	Tongues	na
0206.22.00006	Livers	na
0206.29.00009	Other	na
	Meat and edible meat offal, salted, in brine, dried or smoked; edible flours and meals of meat or meat offal:	
0210.20.00002	Meat of bovine animals	107.4000/107.4500
	Sausages and similar products, of meat, meat offal or blood; food preparations based on these products:	(na-edible beef offal)
	Other:	
1601.00.40003	Beef in airtight containers	107.2000
	Other:	
1601.00.60204	Beef	107.2520
	Other prepared or preserved meat, meat offal or blood:	
	Of bovine animals:	
1602.50.05004	Offal	na.
	Other:	
	Not containing cereals or vegetables:	
1602.50.09000	Cured or pickled	107.4500
	Other:	
	In airtight containers:	
	Corned beef:	
1602.50.10203	In containers holding less than 1 kg	107.4820/107.4840
1602.50.10409	Other	107.4840
	Other:	
1602.50.20201	In containers holding less than 1 kg	107.5220/107.5240
1602.50.20407	Other	107.5240
1602.50.60006	Other	107.6300

This final rule also clarifies the language pertaining to the expenses of the Cattlemen's Beef Promotion and Research Board found in § 1260.151(a) of the Order (7 CFR 1260.151(a)) and established in the final rule on July 18, 1986, at 51 FR 26141. That section provides that the Board is authorized to incur such expenses (including provision for a reasonable reserve) as the Secretary finds are reasonable and likely to be incurred by the Board for its maintenance and functioning and enable it to exercise its powers and perform its duties in accordance with that subpart. It further provides that such expenses incurred by the Board shall not exceed 5 percent of the projected revenue of that fiscal period. The same provision in the proposed rule, found at 51 FR 8990 and designated as § 1260.171, stated that "administrative expenses" incurred by the board shall not exceed 5-percent of the projected revenue of that fiscal period.

The Beef Promotion and Research Act (7 U.S.C. 2901 et seq.) which authorizes the Order limits only "administrative expenses" to the 5-percent limit. Section 2904(4)(D) (7 U.S.C. 2904(4)(D)) provides that the total costs of collection of assessments and administrative staff incurred by the board during any fiscal year shall not exceed 5 per centum of the projected total assessment to be collected by the board for such fiscal year.

It is in a separate provision, not subject to the 5 percent limitation, that the Act authorizes a reasonable reserve. Section 2904(8)(C) (7 U.S.C. 2904(8)(C)) provides that the assessment shall be used for payment of the costs of plans and projects as provided for in paragraph (4), and expenses in administrating the Order, including administrative costs incurred by the Secretary after the Order has been promulgated, and to establish a reasonable reserve.

Thus, under the Act, only those expenses associated with the annual cost of collecting assessment and maintaining the Board's administrative staff ("administrative expenses") are subject to the 5-percent limit. The Act does not include the reserve as an administrative expense; and, therefore, the reserve is not to be included in the 5-percent limit.

To clarify that the reserve is not subject to the 5-percent limitation under the Act and the Order, this final rule substitutes the word "Administrative" for the word "such" as the first word in the second sentence of § 1260.151(a) (7 CFR 1260.151(a)) and the phrase "expenses authorized in the paragraph" is substituted for the word "such" in the last sentence of the same paragraph.

Comments

The interim final rule requested comments from interested persons by January 30, 1989. The Department received only two comments—one from the Office of the Trade Operations, USCS, Department of the Treasury, and one from the Multilateral Trade Policy Affairs Division (MTPAD), FAS, USDA.

The USCS comment recommended that the cents-per-pound assessments listed in the table of assessments for beef and beef products in section 1260.172 (7 CFR 1260.172) of the Order also be expressed in cents per kilogram. The commentor pointed out that the "Unit of Quantity" for reporting purposes for covered products under the HTS is "kilogram." The commentor further stated that "kilogram" will be the unit in which quantities will be reported on USCS entry documents. "Pounds" will no longer be used. In the commentor's opinion, expressing rates only in cents per pound will cause confusion in the importing community, require more work in the preparation and verification of entry documents, and increase the probability of clerical errors. The Agency believes that the adoption of this recommendation would facilitate the computation, collection, and processing of assessments on imported beef and beef products. Accordingly, the cents per kilogram has been included in the table of assessments for beef and beef products in section 1260.172 for each HTS number listed therein. To determine the cents per kilogram, the cents-per-pound assessments are multipled by a mertic conversion factor of 2.2046 and carried to the sixth decimal. The other comment, submitted by FAS, recommended certain changes in the chart contained in the Supplementary Information on page 52629–30 of the interim final rule. That chart listed a comparison of the former TSUS numbers and the new corresponding HTS numbers along with an HTS article description for live cattle and beef and beef products subject to assessment under the Act. It was the commentor's opinion that such changes were necessary to make the listed HTS numbers correctly conform to corresponding TSUS numbers. Based on a review of the latest available information on the conversion of TUSUS numbers to HTS numbers, the Agency concurs with the recommended changes and has revised the applicable numbers in the chart that appears in this supplementary information section accordingly. The changes do not result in any deletions or additions to the list of HTS numbers published in the tables of import assessments for live cattle and beef and beef products contained in § 1260.172 on page 52631 of the interim final rule.

This final rule adopts with some modifications the provisions of the interim final rule. Such changes are to facilitate the application of the Order. Accordingly, the interim final rule amending 7 CFR Part 1260 which was published at 53 FR 52628 on December 29, 1988, is adopted as a final rule with the following changes.

List of Subjects in 7 CFR Part 1260

Administrative practice and procedure, Advertising, Agricultural research, Marketing agreement, Meat and meat products, Beef and beef products.

For the reasons set forth in the peramble, 7 CFR Part 1260 is amended as follows:

PART 1260—BEEF PROMOTION AND RESEARCH

1. The authority citation for 7 CFR Part 1260 continues to read as follows:

Authority: 7 U.S.C. 2901 et. seq.

2. The interim rule is corrected on page 52631 in the second column in paragraph 2. to state that only paragraph (a) of § 1260.151 is revised.

3. Revise § 1260.151(a) to read as follows:

§ 1260.151 Expenses.

(a) The Board is authorized to incur such expenses (including provision for a reasonable reserve), as the Secretary finds are reasonable and likely to be incurred by the board for its maintenance and functioning and to enable it to exercise its powers and perform its duties in accordance with this subpart. Administrative expenses incurred by the board shall not exceed 5 percent of the projected revenue of that fiscal period. Expenses authorized in this paragraph shall be paid from assessments collected pursuant to § 1260.172.

* * * * *

3. Revise § 1260.172(b)(2) to read as follows:

§ 1260.172 Assessments

* * * * *

(b) * * *

(2) The assessment rates for imported cattle, beef, and beef products are as follows:

Live Cattle	Assessment
0102.10.00103	$1.00/hd
0102.10.00201	$1.00/hd
0102.10.00309	$1.00/hd
0102.10.00504	$1.00/hd
0102.90.20004	$1.00/hd
0102.90.40206	$1.00/hd
0102.90.40402	$1.00/hd
0102.90.40607	$1.00/hd

Beef and Beef Products	Assessment	
	cents/lb	cents/kg
0201.10.00103	.77	1.697542
0201.10.00906	.20	0.440920
0201.20.20009	.28	0.617288
0201.20.40005	.27	0.595242
0201.20.60000	.20	0.440920
0201.30.20007	.28	0.617288
0201.30.40003	.27	0.595242
0201.30.60008	.27	0.595242
0202.10.00102	.77	0.697542
0202.10.00905	.20	0.440920
0202.20.20008	.28	0.617288
0202.20.40004	.27	0.595242
0202.20.60009	.20	0.440920
0202.30.20006	.28	0.617288
0202.30.40002	.27	0.595242
0202.30.60007	.27	0.595242
0206.10.00000	.20	0.440920
0206.21.00007	.20	0.440920
0206.22.00006	.20	0.440920
0206.29.00009	.20	0.440920
0210.20.00002	.35	0.771610
1601.00.40003	.25	0.551150
1601.00.60204	.25	0.551150
1602.50.05004	.35	0.771610
1602.50.09000	.35	0.771610
1602.50.10203	.35	0.771610
1602.50.10409	.35	0.771610
1602.50.20201	.37	0.815702
1602.50.20407	.37	0.815702
1602.50.60006	.38	0.837748

* * * * *

Done at Washington, DC on April 17, 1989.

J. Patrick Boyle,

Administrator.

[FR Doc. 89–9502 Filed 4–19–89; 8:45 am]

BILLING CODE 3410–02–M

Animal and Plant Health Inspection Service

9 CFR Part 91

[Docket No. 89–031]

Ports Designated for Exportation of Animals

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations concerning inspection and handling of livestock for exportation by adding Stevedoring Service of America as an operator of an export inspection facility at the port of Seattle, Washington. This action will add an additional facility through which animals may be exported.

EFFECTIVE DATE: May 22, 1989.

FOR FURTHER INFORMATION CONTACT: Dr. George Winegar, Senior Staff Veterinarian, Import-Export Animals Staff, VS, APHIS, USDA, Room 761, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782 (301) 436-8383.

SUPPLEMENTARY INFORMATION:

Background

On January 24, 1989, we published in the **Federal Register** (54 FR 3473-3474, Docket 88-047) a document proposing to amend § 91.14 by adding Stevedoring Service of America as an animal export inspection facility at the port of Seattle, Washington. Our proposal invited the submission of written comments, which were required to be postmarked or received on or before February 8, 1989. We did not receive any comments. Based on the rationale set forth in the proposal, we are adopting the provisions of the proposal as a final rule.

Miscellaneous

The telephone number of Seattle's existing animal export inspection facility, operated by S&W Export Ltd., is incorrectly listed in § 91.14. We are correcting the number to read (206) 241-1837.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The addition of another animal export inspection facility at the port of Seattle, Washington, will facilitate the exportation of livestock from the United States. We believe the addition of this facility will have little or no economic impact on animal exporters, the majority of whom are small businesses. The primary impact will be the increased convenience of having two animal export facilities from which to choose.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

The regulations in this subpart contain no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with state and local officials. (See 7 CFR Part 3015, Subpart V.)

List of Subjects in 9 CFR Part 91

Animal diseases, Animal welfare, Exports, Humane animal handling, Livestock and livestock products, Transportation.

Accordingly, 9 CFR Part 91 will be amended as follows:

PART 91—INSPECTION AND HANDLING OF LIVESTOCK FOR EXPORTATION

1. The authority citation for Part 91 continues to read as follows:

Authority: 21 U.S.C., 105, 112, 113, 114a, 120, 121, 134b, 134f, 612, 613, 614, 618, 46 U.S.C. 466a, 466b, 49 U.S.C. 1509(d); 7 CFR 2.17, 2.51, and 371.2(d).

§ 91.14 [Amended]

2. In § 91.14, the telephone number in paragraph (a)(15)(ii)(A), "(206) 248-2360", is corrected to read "(206) 241-1837".

3. Section 91.14 is amended by adding a new paragraph (a)(15)(ii)(B) to read as follows:

§ 91.14 Ports of embarkation and export inspection facilities.

(a) * * *

(15) * * *

(ii) * * *

(B) Stevedoring Service of America, 3615 11th Avenue SW., Seattle, WA 98134, (206) 623-0304.

* * * * *

Done at Washington, DC, this 14th day of April 1989.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 89-9503 Filed 4-19-89; 8:45 am]

BILLING CODE 3410-34-M

SMALL BUSINESS ADMINISTRATION

13 CFR Part 108

[Rev. 4, Amdt. 21]

RIN: 3245-AB89

Loans to State and Local Development Companies

AGENCY: Small Business Administration.

ACTION: Final rule.

SUMMARY: SBA hereby reduces the minimum amount of pool certificates representing an undivided interest in a pool of development company debentures (505 certificates) from $100,000 to $25,000, in order to improve the market acceptance of 505 certificates.

EFFECTIVE DATE: April 20, 1989.

FOR FURTHER INFORMATION CONTACT: Charles R. Hertzberg, 202-653-6574.

SUPPLEMENTARY INFORMATION: On October 3, 1988 [53 FR 38737] SBA published the Notice of Proposed Rulemaking which is hereby promulgated as a final rule. No comments were received.

Section 505 of the Small Business Investment Act, 15 U.S.C. 697(b), authorizes SBA to issue certificates representing undivided ownership of all or a fractional part of a pool of development company debentures guaranteed by SBA. SBA is further authorized to guarantee the timely payment of principal and interest on these certificates. The full faith and credit of the United States is pledged to such guarantees.

Pursuant to this authority, SBA adopted a regulation which provides in relevant part that 505 certificates shall be issued in amounts of at least $100,000 [13 CFR 108.505(e)]. Experience has shown, however, that this minimum amount is too large, and that purchasers frequently split these amounts by selling fractional interests in such certificates to other investors. By reducing the minimum amount to $25,000, SBA hopes to improve the marketability of 505 certificates, and therefore eventually to reduce the interest cost to the development companies which have issued the debentures forming such pools, and to their small business borrowers.

SBA has determined that this rule is not a major rule for purposes of Executive Order 12291 because it cannot have an annual economic impact on the national economy of $100 million or more. In this regard, SBA estimated that the anticipated interest rate reduction, assuming the authorized program level

for FY 1989 of $468 million and an interest rate reduction of one-half of one percent, will not exceed $2,340,000. The rule also will not result in a major increase in costs for consumers, individual industries, Federal, State or local government agencies, or geographic regions. Further, the proposed rule will not have a significant adverse effect on competition, employment, investment, productivity, innovations or international competitiveness of U.S. based businesses.

SBA certifies that this rule will not have a significant economic impact on a substantial number of small entities because it only changes the form of the certificates now being sold by the underwriters.

SBA also certifies that this rule has no federalism implications warranting the preparation of a Federal Assessment in accordance with Executive Order 12612.

For purposes of the Paperwork Reduction Act, Pub. L. 98-511, 44 U.S.C. Ch. 35, SBA certifies that this rule imposes no reporting or recordkeeping requirements.

List of Subjects in 13 CFR Part 108

Loan Programs/business—Small business.

Accordingly, pursuant to the authority contained in section 308(c) of the Small Business Investment Act, 15 U.S.C. 687(c), SBA hereby amends Part 108, Chapter I, of Title 13, Code of Federal Regulations, as follows:

PART 108—LOANS TO STATE AND LOCAL DEVELOPMENT COMPANIES

1. The authority citation is revised to read as follows:

Authority: Sections. 308(c), 501, 502, 503, 504, 505 of the Small Business Investment Act, 15 U.S.C. 687(c), 695, 696, 697, 697a, 697b.

2. Section 108.505(e) is amended by striking "one hundred thousand dollars ($100,000)" therefrom and substituting "twenty-five thousand dollars ($25,000)" therefor.

(Catalog of Federal Domestic Assistance #59.036 Development Company Loans and #59.041 Certified Development Company Loans)

Dated: March 31, 1989.

James Abdnor,

Administrator.

[FR Doc. 89-9386 Filed 4-19-89; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 37

[Docket No. RM88-25-000]

Generic Determination of Rate of Return on Common Equity for Public Utilities; Benchmark Rate of Return on Common Equity for Public Utilities

April 14, 1989.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of benchmark rate of return on common equity for public utilities.

SUMMARY: In accordance with § 37.5 of its regulations, the Federal Energy Regulatory Commission, by its designee, the Director of the Office of Economic Policy, issues the update to the benchmark rate of return on common equity applicable to rate filings made during the period May 1, 1989 through July 31, 1989. This benchmark rate is set at 12.44 percent.

EFFECTIVE DATE: May 1, 1989.

FOR FURTHER INFORMATION CONTACT: Marvin Rosenberg, Office of Economic Policy, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, (202) 357-8283.

SUPPLEMENTARY INFORMATION:

On December 19, 1988, the Federal Energy Regulatory Commission (Commission) issued a final rule (Order No. 510) concerning the generic determination of the rate of return on common equity for public utilities.[1] In several earlier rulemaking proceedings, the Commission established a discounted cash flow (DCF) formula to determine the average cost of common equity and a quarterly indexing procedure to calculate benchmark rates of return on common equity for public utilities and codified the formula and procedure at § 37.9 of its Regulations.[2] In Order No. 510, the Commission determined that 4.3 percent is an appropriate expected annual dividend growth rate for use in the quarterly indexing procedure during the 12 months beginning February 1, 1989 and that 0.03 percent is an appropriate flotation cost adjustment factor for that period.

The Commission, by its designee, the Director of the Office of Economic Policy, uses the quarterly indexing procedure to determine that the benchmark rate of return on common equity applicable to rate filings made during the period May 1, 1989 through July 31, 1989 is 12.44 percent.

Section 37.9 of the Commission's regulations requires that the quarterly benchmark rate of return be set equal to the average cost of common equity for the jurisdictional operations of public utilities. This average cost is based on the average of the median dividend yields for the two most recent calendar quarters for a sample of 98 utilities.[3] The average yield is used in the following formula with fixed adjustment factors (determined in the most recent annual proceeding) to determine the cost rate:

$$k_t = 1.02\ Y_t + 4.33$$

where k_t is the average cost of common equity and Y_t is the average dividend yield.

The attached appendix provides the supporting data for this update. The median dividend yields for the sample of utilities for the fourth quarter of 1988 and the first quarter of 1989 are 7.85 and 8.04 percent, respectively. The average yield for those two quarters is 7.95 percent. Use of the average dividend yield in the above formula produces an average cost of common equity of 12.44 percent.

This notice supplements the generic rate of return rule announced in Order No. 510, issued December 19, 1988 and effective on February 1, 1989.

List of Subjects in 18 CFR Part 37

Electric power rates, Electric utilities, Reporting and recordkeeping requirements.

In consideration of the foregoing, the Commission amends Part 37, Chapter I, Title 18 of the Code of Federal Regulations, as set forth below, effective May 1, 1989.

Richard P. O'Neill,

Director, Office of Economic Policy.

PART 37—GENERIC DETERMINATION OF RATE OF RETURN ON COMMON EQUITY FOR PUBLIC UTILITIES

1. The authority citation for Part 37 continues to read as follows:

[1] Generic Determination of Rate of Return on Common Equity for Public Utilities, Order No. 510, 53 FR 51,752 (Dec. 23, 1988), 45 FERC ¶ 61,452 (Dec. 19, 1988).

[2] 18 CFR 37.9 (1988). The most recent adoption of the DCF formula and quarterly indexing procedure came in Order No. 489, 53 FR 3342 (Feb. 5, 1988).

[3] As a result of the acquisition of Utah Power and Light by PacifiCorp, the Commission has reduced the number of companies in the sample for the most recent quarter to 98. It has made this change in accordance with the criteria for inclusion in the sample specified in 18 CFR 37.9(c) (1987).

Authority: Federal Power Act, 16 U.S.C. 791a–825r (1982); Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982).

2. In § 37.9, paragraph (d) is revised to read as follows:

§ 37.9 Quarterly indexing procedure.

* * * * *

(d) *Table of Quarterly Benchmark Rates of Return.* The following table presents the quarterly benchmark rates of return on common equity:

Benchmark Applicability Period (t)	Dividend Increase Adjustment Factor (a)	Expected Growth Adjustment Factor (b)	Current Dividend Yield (Y_t)	Cost of Common Equity (K_t)	Benchmark Rate of Return
2/1/86 to 4/30/86	1.02	4.54	9.03	13.75	13.75
5/1/86 to 7/31/86	1.02	4.54	8.37	13.08	13.25
8/1/86 to 10/31/86	1.02	4.54	7.49	12.18	12.75
11/1/86 to 1/31/87	1.02	4.54	6.75	11.43	12.25
2/1/87 to 4/30/87	1.02	4.63	6.44	11.20	11.20
5/1/87 to 7/31/87	1.02	4.63	6.54	11.30	11.30
8/1/87 to 10/31/87	1.02	4.63	6.97	11.74	11.74
11/1/87 to 1/31/88	1.02	4.63	7.49	12.27	12.27
2/1/88 to 4/30/88	1.02	4.36	7.90	12.42	12.42
5/1/88 to 7/31/88	1.02	4.36	7.99	12.51	12.51
8/1/88 to 10/31/88	1.02	4.36	7.84	12.36	12.36
11/1/88 to 1/31/89	1.02	4.36	7.92	12.44	12.44
2/1/89 to 4/30/89	1.02	4.33	7.89	12.38	12.38
5/1/89 to 7/31/89	1.02	4.33	7.95	12.44	12.44

Note: The Appendix will not be published in *Code of Federal Regulations*

Appendix

EXHIBIT NO.	TITLE
1	Initial sample of utilities
2	Utilities excluded from the sample for the indicated quarter due to either zero dividends or a reduction in dividends for this quarter or the prior three quarters
3	Annualized dividend yields for the indicated quarter for utilities retained in the sample
Source of Data	Standard and Poor's Compustat Services, Inc., Utility COMPUSTAT II Quarterly Data Base.

EXHIBIT 1.—SAMPLE OF UTILITIES

Utility	Ticker symbol	Industry code
Allegheny Power System	AYP	4911
American Electric Power	AEP	4911
Atlantic Energy Inc	ATE	4911
Baltimore Gas & Electric	BGE	4931
Black Hills Corp	BKH	4911
Boston Edison Co	BSE	4911
Carolina Power & Light	CPL	4911
Centerior Energy Corp	CX	4911
Central & South West Corp	CSR	4911
Central Hudson Gas & Elec	CNH	4931
Central Ill Public Servic	CIP	4931
Central Louisiana Electri	CNL	4911
Central Maine Power Co	CTP	4911
Central Vermont Pub Serv	CV	4911
Cilcorp Inc	CER	4931
Cincinnati Gas & Electric	CIN	4931

EXHIBIT 1.—SAMPLE OF UTILITIES—Continued

Utility	Ticker symbol	Industry code
CMS Energy Corp	CMS	4931
Commonwealth Edison	CWE	4911
Commonwealth Energy Syste	CES	4931
Consolidated Edison of NY	ED	4931
Delmarva Power & Light	DEW	4931
Detroit Edison Co	DTE	4911
Dominion Resources Inc	D	4931
DPL Inc	DPL	4931
Duke Power Co	DUK	4911
Duquesne Light Co	DQU	4911
Eastern Utilities Assoc	EUA	4911
Empire District Electric	EDE	4911
Fitchburg Gas & Elec Ligh	FGE	4931
Florida Progress Corp	FPC	4911
FPL Group Inc	FPL	4911
General Public Utilities	GPU	4911
Green Mountain Power Corp	GMP	4911
Gulf States Utilities Co	GSU	4911
Hawaiian Electric Inds	HE	4911
Houston Industries Inc	HOU	4911
I E Industries Inc	IEL	4931
Idaho Power Co	IDA	4911
Illinois Power Co	IPC	4931
Interstate Power Co	IPW	4931
Iowa Resources Inc	IOR	4911
Iowa-Illinois Gas & Elec	IWG	4931
IPALCO Enterprises Inc	IPL	4911
Kansas City Power & Light	KLT	4911
Kansas Gas & Electric	KGE	4911
Kansas Power & Light	KAN	4931
Kentucky Utilities Co	KU	4911
Long Island Lighting	LIL	4931
Louisville Gas & Electric	LOU	4931
Maine Public Service	MAP	4911
Middle South Utilities	MSU	4911
Midwest Energy Co	MWE	4931
Minnesota Power & Light	MPL	4911
Montana Power Co	MTP	4931
NECO Enterprises Inc	NPT	4911
Nevada Power Co	NVP	4911
New England Electric Syst	NES	4911
New York State Elec & Gas	NGE	4931

EXHIBIT 1.—SAMPLE OF UTILITIES—Continued

Utility	Ticker symbol	Industry code
Niagara Mohawk Power	NMK	4931
NIPSCO Industries Inc	NI	4931
Northeast Utilities	NU	4911
Northern States Power-MN	NSP	4931
Ohio Edison Co	OEC	4911
Oklahoma Gas & Electric	OGE	4911
Orange & Rockland Utiliti	ORU	4931
Pacific Gas & Electric	PCG	4931
Pacificorp	PPW	4931
Pennsylvania Power & Ligh	PPL	4911
Philadelphia Electric Co	PE	4931
Pinnacle West Capital Cor	PNW	4911
Portland General Corp	PGN	4911
Potomac Electric Power	POM	4911
PSI Holdings Inc	PIN	4911
Public Service Co of Colo	PSR	4931
Public Service Co of N H	PNH	4911
Public Service Co of N ME	PNM	4931
Public Service Entrp	PEG	4931
Puget Sound Power & Light	PSD	4911
Rochester Gas & Electric	RGS	4931
San Diego Gas & Electric	SDO	4931
Scana Corp	SCG	4931
SCECORP	SCE	4911
Sierra Pacific Resources	SRP	4931
Southern Co	SO	4911
Southern Indiana Gas & El	SIG	4931
St Joseph Light & Power	SAJ	4931
Teco Energy Inc	TE	4911
Texas Utilities Co	TXU	4911
TNP Enterprises Inc	TNP	4911
Tucson Electric Power Co	TEP	4911
Union Electric Co	UEP	4911
United Illuminating Co	UIL	4911
Unitil Corp	UTL	4911
Utilicorp United Inc	UCU	4931
Washington Water Power	WWP	4931
Wisconsin Energy Corp	WEC	4931
Wisconsin Public Service	WPS	4931
WPL Holdings Inc	WPH	4931

N = 98.

EXHIBIT 2.—UTILITIES EXCLUDED FROM THE SAMPLE FOR THE INDICATED QUARTER DUE TO EITHER ZERO DIVIDENDS OR A CUT IN THE DIVIDENDS FOR THIS QUARTER OR THE PRIOR THREE QUARTERS

[Year=89 Quarter=1]

Ticker symbol	Utility	Reason for exclusion
CX	Centerior Energy Corp	Dividend rate was reduced for the quarter Calendar 88Q2.
CMS	CMS Energy Corp	Dividend rate was zero for quarter Calendar 89Q1.
GSU	Gulf States Utilities Co	Dividend rate was zero for quarter Calendar 89Q1.
LIL	Long Island Lighting	Dividend rate was zero for quarter Calendar 89Q1.
MSU	Middle South Utilities	Dividend rate was zero for quarter Calendar 89Q3.
PCG	Pacific Gas & Electric	Dividend rate was reduced for the quarter Calendar 88Q3.
PNW	Pinnacle West Capital Corp	Dividend rate was reduced for the quarter Calendar 89Q1.
PIN	PSI Holdings Inc	Dividend rate was zero for quarter Calendar 88Q4.
PNH	Public Service Co. of N H	Dividend rate was zero for quarter Calendar 89Q1.
PNM	Public Service Co. of N ME	Dividend rate was reduced for the quarter Calendar 88Q2.

N=10.

EXHIBIT 3.—ANNUALIZED DIVIDEND YIELDS FOR THE INDICATED QUARTER FOR UTILITIES RETAINED IN THE SAMPLE

[Year = 89 Quarter = 1]

Ticker symbol	Price, 1st month of qtr-high	Price, 1st month of qtr-low	Price, 2nd month of qtr-high	Price, 2nd month of qtr-low	Price, 3rd month of qtr-high	Price, 3rd month of qtr-low	Average price	Dividends annual rate	Annualized dividend yield
AEP	27.875	26.500	27.750	26.000	26.750	25.750	26.771	2.370	8.853
ATE	33.375	32.500	33.750	32.625	33.625	32.625	33.083	2.760	8.343
AYP	37.875	36.750	38.000	36.875	37.750	35.625	37.146	3.080	8.292
BGE	32.125	30.750	32.000	30.625	31.000	28.500	30.833	2.000	6.486
BKH	27.000	24.875	26.750	25.125	26.750	25.000	25.917	1.520	5.865
BSE	16.625	15.500	16.125	15.375	16.625	15.750	16.000	1.820	11.375
CER	33.625	32.250	34.000	32.625	35.000	31.750	33.208	2.460	7.408
CES	32.500	30.750	31.500	29.625	31.500	30.000	30.979	2.800	9.038
CIN	26.375	25.250	26.625	25.375	26.000	24.375	25.667	2.240	8.727
CIP	22.250	21.500	22.125	20.750	21.125	20.125	21.312	1.760	8.258
CNH	22.375	21.125	22.125	21.375	21.750	20.875	21.604	1.760	8.147
CNL	32.250	31.125	32.250	31.250	32.125	31.500	31.750	2.320	7.307
CPL	37.250	35.500	36.750	35.000	36.125	35.000	35.938	2.840	7.903
CSR	32.750	31.125	32.375	30.250	30.875	29.750	31.187	2.600	8.337
CTP	18.750	17.750	18.625	17.500	17.875	17.000	17.917	1.520	8.484
CV	25.000	23.250	25.000	22.125	25.250	24.125	24.125	1.980	8.207
CWE	34.625	32.125	34.625	32.250	33.750	32.375	33.292	3.000	9.011
D	42.625	41.750	42.500	40.375	41.625	40.375	41.542	3.200	7.703
DEW	17.750	17.000	17.875	17.250	17.750	17.250	17.479	1.500	8.582
DPL	25.500	24.750	25.750	25.000	25.375	24.375	25.125	2.240	8.915
DQU	18.750	17.875	18.625	18.000	19.000	17.375	18.271	1.280	7.006
DTE	18.250	17.375	18.500	17.625	18.250	17.125	17.854	1.680	9.410
DUK	46.750	45.375	46.250	43.000	44.500	42.750	44.771	2.960	6.611
ED	47.250	46.000	47.250	44.375	45.875	44.625	45.896	3.440	7.495
EDE	28.375	27.750	28.250	27.500	28.000	26.750	27.771	2.220	7.994
EUA	32.875	31.250	32.625	32.000	32.375	30.375	31.917	2.400	7.520
FGE	30.375	28.375	28.500	27.125	30.625	27.750	28.792	2.000	6.946
FPC	34.875	34.125	35.125	33.500	34.250	33.250	34.187	2.560	7.488
FPL	31.625	30.625	31.625	29.625	30.250	29.000	30.458	2.200	2.223
GMP	23.750	22.250	23.500	22.500	23.625	22.125	22.958	1.920	8.363
GPU	38.125	36.500	37.875	36.625	38.875	36.875	37.479	1.800	4.803
HE	30.875	29.375	31.000	29.500	30.750	29.375	30.146	2.040	6.767
HOU	29.250	27.500	29.250	26.750	27.875	26.875	27.917	2.960	10.603
IDA	23.875	22.625	23.500	22.000	23.500	22.750	23.042	1.800	7.812
IEL	23.375	22.625	23.125	22.500	23.250	21.625	22.750	2.040	8.967
IOR	17.875	17.000	18.125	17.500	18.000	17.625	17.687	1.660	9.385
IPC	21.750	19.000	20.750	16.625	18.000	13.875	18.333	2.640	14.400
IPL	22.875	22.375	22.875	22.125	22.750	21.750	22.458	1.720	7.659
IPW	23.000	22.000	23.125	21.500	22.000	21.250	22.146	2.000	9.031
IWG	39.750	37.625	39.000	38.250	38.750	37.125	38.417	3.260	8.486
KAN	23.875	22.500	23.375	22.000	22.750	21.625	22.687	1.760	7.758
KGE	21.250	20.625	21.250	20.500	20.750	19.250	20.604	1.600	7.765
KLT	31.000	29.750	30.750	29.250	29.750	28.125	29.771	2.440	8.196
KU	18.875	18.000	18.750	17.875	18.500	18.000	18.333	1.400	7.636
LOU	34.625	33.500	33.750	32.500	33.625	32.000	33.333	2.720	8.160
MAP	21.187	20.312	21.625	20.875	24.500	21.125	21.604	1.500	6.943
MPL	24.000	23.125	24.000	22.875	24.750	23.375	23.687	1.780	7.515
MTP	35.625	34.375	35.000	34.500	35.625	34.000	34.854	2.760	7.919
MWE	19.625	18.875	19.500	18.250	19.125	18.000	18.896	1.560	8.256
NES	24.250	23.375	24.125	23.250	23.500	22.250	23.458	2.040	8.696
NGE	23.625	22.500	23.375	22.500	23.000	21.875	22.812	2.000	8.767
NI	14.125	13.125	14.500	13.750	14.125	13.375	13.833	0.840	6.072
NMK	13.750	11.750	12.625	11.500	12.500	11.750	12.312	1.200	9.746
NPT	20.500	19.125	19.375	17.750	18.000	15.875	18.437	1.500	8.136
NSP	33.250	32.250	33.125	31.125	31.625	30.250	31.937	2.120	6.638

EXHIBIT 3.—ANNUALIZED DIVIDEND YIELDS FOR THE INDICATED QUARTER FOR UTILITIES RETAINED IN THE SAMPLE—Continued

[Year = 89 Quarter = 1]

Ticker symbol	Price, 1st month of qtr-high	Price, 1st month of qtr-low	Price, 2nd month of qtr-high	Price, 2nd month of qtr-low	Price, 3rd month of qtr-high	Price, 3rd month of qtr-low	Average price	Dividends annual rate	Annualized dividend yield
NU	20.125	19.500	20.000	18.625	19.875	18.500	19.437	1.760	9.055
NVP	20.625	20.000	20.750	19.750	20.500	19.375	20.167	1.520	7.537
OEC	20.750	18.625	20.875	20.375	20.375	19.375	20.062	1.960	9.769
OGE	33.000	32.000	33.125	32.375	33.000	32.375	32.646	2.380	7.290
ORU	29.875	28.750	28.875	28.000	28.250	27.250	28.500	2.260	7.930
PE	20.500	19.625	21.125	19.250	20.125	19.125	19.958	2.200	11.023
PEG	24.875	23.875	24.875	23.500	24.500	23.000	24.104	2.040	8.463
PGN	22.625	21.000	22.875	22.250	22.750	21.375	22.146	1.960	8.850
POM	20.375	19.375	20.625	19.250	20.125	19.250	19.833	1.460	7.361
PPL	36.250	35.500	36.375	34.750	35.250	34.250	35.396	2.860	8.080
PPW	35.125	34.125	34.750	33.375	35.000	33.125	34.250	2.640	7.708
PSD	19.125	18.250	18.875	18.000	18.875	18.125	18.542	1.760	9.492
PSR	21.750	20.375	21.000	20.125	21.625	20.000	20.812	2.000	9.610
RGS	18.250	17.000	18.000	17.375	17.875	17.000	17.583	1.500	8.531
SAJ	22.000	20.000	22.875	21.500	22.750	21.375	21.750	1.520	6.989
SCE	33.625	31.625	33.375	31.750	32.500	31.000	32.312	2.480	7.675
SCG	31.750	30.625	31.250	30.500	31.000	29.625	30.792	2.460	7.989
SDO	39.250	37.250	39.000	37.500	38.125	36.375	37.917	2.700	7.121
SIG	29.625	27.875	29.750	28.375	28.750	27.750	28.687	1.800	6.275
SO	24.500	22.000	23.875	22.500	23.875	22.875	23.271	2.140	9.196
SRP	23.625	23.000	25.875	22.375	25.500	23.500	23.979	1.800	7.507
TE	23.750	22.500	23.000	22.000	23.000	22.125	22.729	1.420	6.247
TEP	50.250	48.375	49.000	45.625	47.875	38.875	46.667	3.900	8.357
TNP	20.000	19.375	20.250	19.125	20.125	19.500	19.729	1.550	7.856
TXU	29.375	27.875	29.250	27.750	28.875	27.750	28.479	2.920	10.253
UCU	19.363	18.505	19.608	17.500	18.375	17.750	18.517	1.333	7.199
UEP	24.375	23.375	24.500	23.375	24.250	23.000	23.812	2.000	8.399
UIL	27.000	25.000	27.125	25.625	26.500	24.625	25.979	2.320	8.930
UTL	30.750	30.000	31.125	30.500	34.750	30.500	31.271	2.080	6.652
WEC	27.500	26.125	26.500	25.125	26.500	25.375	26.187	1.540	5.881
WPH	23.125	22.125	22.625	21.875	22.875	22.000	22.437	1.680	7.487
WPS	22.250	21.750	22.375	20.875	21.500	20.500	21.542	1.580	7.335
WWP	28.000	27.000	27.500	26.125	27.000	26.000	26.937	2.480	9.206

[FR Doc. 89-9479 Filed 4-19-89; 8:45 am]
BILLING CODE 6717-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 58

[Docket No. 89N-0054]

Good Laboratory Practice Regulations; Minor Amendment

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending its regulations on good laboratory practice (GLP) for nonclinical laboratory studies to confirm the FDA policy that testing facilities are to use humane procedures for animal identification and experimentation. The agency has determined that toe clipping for animal identification is a potentially painful procedure and its use in animal studies should be discouraged. The amendment will not affect the intent of the regulatory requirements, which is to assure that animals used in nonclinical laboratory studies are appropriately identified.

DATES: Effective May 22, 1989; written comments by May 22, 1989.

ADDRESS: Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Paul D. Lepore, Division of Compliance Policy (HFC-230), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-2390.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of December 22, 1978 (43 FR 59986), FDA published final regulations regarding GLP for nonclinical laboratory studies. These regulations, codified at 21 CFR Part 58, prescribe GLP for conducting nonclinical laboratory studies that support or are intended to support applications for research or marketing permits for products regulated by FDA, including food and color additives, animal food additives, human and animal drugs, medical devices for human use, biological products, and electronic products. Compliance with these regulations is intended to assure the quality and integrity of the safety data filed under provisions of the Federal Food, Drug, and Cosmetic Act and the Public Health Service Act. (See 21 CFR 58.1(a).) The GLP regulations were amended in a final rule published on September 4, 1987 (52 FR 33768).

Section 58.90(d) of the GLP regulations provides, in pertinent part, that "Warm-blooded animals, excluding suckling rodents, used in laboratory procedures * * * shall receive appropriate identification (e.g., tattoo, toe clip, color code, ear tag, ear punch, etc.) * * *."

The need for requiring appropriate identification of the animals was discussed in the preamble to the proposed rule (November 19, 1976; 41 FR 51206 at 51214) and in the preamble to the final rule (December 22, 1978; 43 FR 59986 at 60004, par. 157). FDA has determined that appropriate identification is necessary to preclude animal mixups during a study. Such mixups in test animal identification could affect the validity of the study results. Paragraph 157 of the preamble to the final rule advised that, because of the varied nature of the tests and the test systems that could be used in a study, the precise manner of animal identification is left to the discretion of the test facility.

Elsewhere in the preamble to the final rule (par. 150), the agency stated that the humane care of test animals is a recognized and accepted scientific and ethical responsibility that is encouraged by various agency guidelines and the Animal Welfare Act. The agency also stated that the promulgation of the GLP regulations should foster the humane treatment of animals used in nonclinical laboratory studies.

In light of the foregoing, FDA listed in § 58.90(d) examples of methods of animal identification which were considered to be appropriate and humane. At that time, toe clipping was considered to be appropriate and humane. Since then, an increasing number of veterinarians for laboratory animals have determined that toe clipping is potentially painful and that its use should be discouraged.

As a result, the Interagency Research Animal Committee, a group consisting of representatives from Federal agencies involved in the care, use, and conservation of animals used in biomedical research and testing, has recommended that a scientist wishing to use toe clipping of animals as a method of animal identification should obtain the approval of each facility's institutional animal care and use committee (the committee). Before giving its consent, the committee should be convinced that no other method of identifying the animals would be appropriate. The committee should also be convinced that anesthesia and antisepsis would be used so that the toe clipping procedure would be humane and conform to accepted veterinary procedures. The Interagency Research Animal Committee did not recommend prohibiting the use of toe clipping entirely, but did recommend restricting its use to situations where this method of identification is necessary. The interagency committee also recommended procedures for performing toe clipping if it is to be done.

FDA accepts the recommendations of the Interagency Research Animal Committee and believes that the use of toe clipping of animals in nonclinical laboratory studies should be discouraged in accordance with that group's recommendations. Accordingly, FDA is removing the words "toe clip" from the second parenthetical expression in § 58.90(d). The amendment will eliminate the impression given by the current regulation that toe clipping is an approved and humane method of animal identification. The amendment will not affect the responsibility of testing facilities to use appropriate and humane methods of animal identification.

Under section 553(b) of the Administrative Procedure Act (5 U.S.C. 553(b) and FDA's administrative practices and procedures regulations (21 CFR 10.40(e)), the Commissioner finds that notice and public procedure for amending 21 CFR 58.90(d) are unnecessary and contrary to the public interest. FDA believes that this amendment will help to promote the humane treatment of laboratory animals. However, by removing one example from the list of examples of methods of identification given parenthetically in § 58.90(d), the agency is neither adding nor removing a regulatory requirement. That is, the substantive requirements of the GLP regulations are unchanged by this amendment. Therefore, the Commissioner finds good cause to proceed directly to a final rule.

Although the agency is publishing this final rule without an opportunity for prior notice and comment as a proposed rule, FDA is providing for comment on this final rule in accordance with § 10.40(e)(1) of the agency's regulations (21 CFR 10.40(e)(1)).

Economic Impact

In accordance with Executive Order 12291, FDA has analyzed the potential economic effects of this final rule. The agency has determined that the rule is not a major rule as defined by the Order.

Environmental Impact

The agency has determined under 21 CFR 25.24(a)(10) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Comments

Interested persons may, on or before May 22, 1989, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 58

Laboratories, Reporting and Recordkeeping requirements.

Therefore, under the Public Health Service Act as amended by the Radiation Control for Health and Safety Act of 1968 and under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, Part 58 is amended to read as follows:

PART 58—GOOD LABORATORY PRACTICE FOR NONCLINICAL LABORATORY STUDIES

1. The authority citation for 21 CFR Part 58 is revised to read as follows:

Authority: Secs. 306, 402(a), 406, 408, 409, 502, 503, 505, 506, 507, 510, 512–516, 518–520, 701(a), 706, 801, Pub. L. 717, 52 Stat. 1045–1046 as amended, 1049–1053 as amended, 1055, 1058 as amended, 55 Stat. 851 as amended, 59 Stat. 463 as amended, 68 Stat. 511–517 as amended, 72 Stat. 1785–1788 as amended, 76 Stat. 794 as amended, 82 Stat. 343–351, 90 Stat. 539–574 (21 U.S.C. 336, 342(a), 346, 346a, 348, 352, 353, 355, 356, 357, 360, 360b–360f, 360h–360j, 371(a), 376, 381); secs. 215, 351, 354–360F, Pub. L. 410, 58 Stat. 690, 702 as amended, 82 Stat. 1173–1186 as amended (42 U.S.C. 216, 262, 263b–263n); 21 CFR 5.11.

§ 58.90 [Amended]

2. Section 58.90 *Animal care* is amended in paragraph (d) by removing the words "toe clip," from the second parenthetical expression.

Dated: April 4, 1989.

Alan L. Hoeting,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 89-9469 Filed 4-19-89; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Parts 316, 342, and 351

[Dept. of Treasury Circs. No. 653, Tenth Revision; Public Debt Series No. 3-67, 2nd Rev.; and No. 1-80, 2nd Rev.]

U.S. Savings Bonds and Notes; Tables Reflecting Investment Yields and Maturity Periods

AGENCY: Bureau of the Public Debt, Fiscal Service, Department of the Treasury.

ACTION: Notice providing update of tables showing the redemption values and investment yields of United States Savings Bonds/Notes.

SUMMARY: This notice updates the tables set forth in the offering circulars for Series E/EE savings bonds and savings notes. The tables reflect the redemption values and investment yields for interest accrual dates occurring May 1, 1989 through October

1, 1989, for Series E/EE savings bonds and savings notes.

EFFECTIVE DATE: April 20, 1989.

FOR FURTHER INFORMATION CONTACT: Jacqueline L. Jackson, Attorney Adviser, Office of the Chief Counsel, Bureau of the Public Debt, Washington, DC 20239-0001, (202) 376-4320.

SUPPLEMENTARY INFORMATION: This notice, published semi-annually, updates the tables reflecting the investment yields of Series E/EE savings bonds and savings notes. Department of the Treasury Circulars No. 653 (Series E), No. 1-80 (Series EE) and Public Debt Series No. 3-67 (Saving Notes) are hereby supplemented by the addition of tables showing the redemption values and investment yields for interest accrual dates occurring May 1, 1989 through October 1, 1989. It should be noted that the values and yields contained in the tables apply through October 31, 1989. It should be noted that the tables reflect the market-based variable yields described in the offering circulars at 31 CFR 316.8(b)(2)(C)(iii) for Series E savings bonds, 31 CFR 351.2(f)(2) for Series EE savings bonds, and 31 CFR 342.2a(b)(2) for savings notes. The values shown apply only where the securities are actually paid. They do not form the basis for future accruals.

Procedural Requirements

This notice is not a rulemaking document and, therefore, is not considered a "major rule" for purposes of Executive Order 12291. A regulatory impact analysis, therefore, is not required. The notice and public procedures of the Administrative Procedure Act are inapplicable, pursuant to 5 U.S.C. 553(a)(2). As no notice of proposed rule-making is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*) do not apply.

List of Subjects in 31 CFR Parts 316, 342, 351

Banks and banking, Federal Reserve System, Government securities.

Dated: March 22, 1989.

Gerald Murphy,

Fiscal Assistant Secretary.

Accordingly, pursuant to the authority of Department of the Treasury Circular No. 653, Tenth Revision (31 CFR Part 316), Public Debt Series No. 3-67, Second Revision (31 CFR Part 342), and No. 1-80, Second Revision (31 CFR Part 351), the following updated tables are provided:

U.S. SAVINGS BONDS, SERIES E—REDEMPTION VALUES AND INVESTMENT YIELDS FOR ACCRUAL DATES OCCURRING MAY 1, 1989 THRU OCTOBER 1, 1989

Issue price		$7.50	$18.75	$37.50	$75.00	$150.00	$375.00	$750.00			
Denomination		10.00	25.00	50.00	100.00	200.00	500.00	1,000.00			
Issue dates	Accrual date [1]	Redemption values during half-year period following accrual date (values increase on first day of period)							Actual yield [2] (percent)	Market yield [3] (percent)	Minimum yield [4] (percent)
5/49 thru 5/49	5/1/89	55.21	138.02	276.04	552.08	1,104.16	2,760.40	5,520.80	8.50	8.25	8.50
6/49 thru 10/49	6/1/89	57.53	143.83	287.66	575.32	1,150.64	2,876.60	5,753.20	8.50	8.25	8.50
11/49 thru 11/49	5/1/89	55.72	139.30	278.60	557.20	1,114.40	2,786.00	5,572.00	8.50	8.25	8.50
12/49 thru 4/50	6/1/89	56.42	141.06	282.12	564.24	1,128.48	2,821.20	5,642.40	8.50	8.25	8.50
5/50 thru 5/50	5/1/89	54.65	136.63	273.26	546.52	1,093.04	2,732.60	5,465.20	8.50	8.25	8.50

[1] Accrual date shown is for bonds of the first issue date listed—add one month for each successive month of issue.

[2] Actual investment yield (annual percentage rate) from date of issue or beginning of first accrual period on or after November 1, 1982, whichever is later, to the accrual date shown.

[3] Market based variable investment yield (annual percentage rate) from date of issue or beginning of first accrual period on or after November 1, 1982, whichever is later, to the accrual date shown.

[4] Guaranteed minimum yield (annual percentage rate) from date of issue or beginning of first accrual period on or after November 1, 1982, whichever is later, to the accrual date shown.

Note: Additional investment information is obtainable from Federal Reserve Banks and the Bureau of the Public Debt, Savings Bond Operations Office, 200 Third St., Parkersburg, WV 26102-1328.

U.S. SAVINGS BONDS, SERIES E—REDEMPTION VALUES AND INVESTMENT YIELDS FOR ACCRUAL DATES OCCURRING MAY 1, 1989 THRU OCTOBER 1, 1989

Issue price		$18.75	$37.50	$75.00	$150.00	$375.00	$750.00				
Denomination		25.00	50.00	100.00	200.00	500.00	1000.00				
Issue dates	Accrual date (1)	Redemption values during half-year period following accrual date (values increase on first day of period)							Actual yield [2] (percent)	Market yield [3] (percent)	Minimum yield [4] (percent)
6/50 thru 10/50	6/1/89	138.50	277.00	554.00	1108.00	2770.00	5540.00		8.50	8.50	8.50
11/50 thru 11/50	5/1/89	134.14	268.28	536.56	1073.12	2682.80	5365.60		8.50	8.50	8.50
12/50 thru 12/50	6/1/89	136.14	272.28	544.56	1089.12	2722.80	5445.60		8.50	8.50	8.50
1/51 thru 4/51	7/1/89	136.14	272.28	544.56	1089.12	2722.80	5445.60		8.50	8.50	8.50
5/51 thru 5/51	5/1/89	131.86	263.72	527.44	1054.88	2637.20	5274.40		8.50	8.50	8.50
6/51 thru 6/51	6/1/89	133.81	267.62	535.24	1070.48	2676.20	5352.40		8.50	8.50	8.50
7/51 thru 10/51	7/1/89	133.81	267.62	535.24	1070.48	2676.20	5352.40		8.50	8.50	8.50
11/51 thru 11/51	5/1/89	129.59	259.18	518.36	1036.72	2591.80	5183.60		8.50	8.50	8.50
12/51 thru 12/51	6/1/89	131.47	262.94	525.88	1051.76	2629.40	5258.80		8.50	8.50	8.50
1/52 thru 4/52	7/1/89	131.47	262.94	525.88	1051.76	2629.40	5258.80		8.50	8.50	8.50

[1] Accrual rate shown is for bonds of the first issue date listed—add one month for each successive month of issue.

[2] Actual investment yield (annual percentage rate) from date of issue or beginning of first accrual period on or after November 1, 1982, whichever is later, to the accrual date shown.

[3] Market based variable investment yield (annual percentage rate) from date of issue or beginning of first accrual period on or after November 1, 1982, whichever is later, to the accrual date shown.

[4] Guaranteed minimum yield (annual percentage rate) from date of issue or beginning of first accrual period on or after November 1, 1982, whichever is later, to the accrual date shown.

Note: Additional investment information is obtainable from Federal Reserve Banks and the Bureau of the Public Debt, Savings Bond Operations Office, 200 Third St., Parkersburg, WV 26102-1328.

U.S. Savings Bonds, Series E—Redemption Values and Investment Yields for Accrual Dates Occurring May 1, 1989 Thru October 1, 1989

Issue price		$18.75	$37.50	$75.00	$150.00	$375.00	$750.00	$7500			
Denomination		25.00	50.00	100.00	200.00	500.00	1000.00	10000			
Issue dates	Accrual date [1]	Redemption values during half-year period following accrual date (values increase on first day of period)							Actual yield [2] (Percent)	Market yield [3] (Percent)	Minimum yield [4] (Percent)
5/52 thru 5/52	7/1/89	130.97	261.94	523.88	1047.76	2619.40	5238.80	52388	8.50	8.25	8.50
6/52 thru 8/52	8/1/89	131.27	262.54	525.08	1050.16	2625.40	5250.80	52508	8.50	8.25	8.50
9/52 thru 9/52	5/1/89	127.13	254.26	508.52	1017.04	2542.60	5085.20	50852	8.50	8.25	8.50
10/52 thru 10/52	6/1/89	128.73	257.46	514.92	1029.84	2574.60	5149.20	51492	8.50	8.25	8.50
11/52 thru 11/52	7/1/89	128.73	257.46	514.92	1029.84	2574.60	5149.20	51492	8.50	8.25	8.50
12/52 thru 2/53	8/1/89	129.07	258.14	516.28	1032.56	2581.40	5162.80	51628	8.50	8.25	8.50
3/53 thru 3/53	5/1/89	123.06	246.12	492.24	984.48	2461.20	4922.40	49224	8.25	8.25	7.50
4/53 thru 4/53	6/1/89	124.58	249.16	498.32	996.64	2491.60	4983.20	49832	8.25	8.25	7.50
5/53 thru 5/53	7/1/89	124.58	249.16	498.32	996.64	2491.60	4983.20	49832	8.25	8.25	7.50
6/53 thru 8/53	8/1/89	124.88	249.76	499.52	999.04	2497.60	4995.20	49952	8.25	8.25	7.50
9/53 thru 9/53	5/1/89	120.94	241.88	483.76	967.52	2418.80	4837.60	48376	8.25	8.25	7.58
10/53 thru 10/53	6/1/89	122.48	244.96	489.92	979.84	2449.60	4899.20	48992	8.25	8.25	7.58
11/53 thru 11/53	7/1/89	122.48	244.96	489.92	979.84	2449.60	4899.20	48992	8.25	8.25	7.58
12/53 thru 2/54	8/1/89	122.80	245.60	491.20	982.40	2456.00	4912.00	49120	8.25	8.25	7.58
3/54 thru 3/54	5/1/89	118.95	237.90	475.80	951.60	2379.00	4738.00	47580	8.25	8.25	7.65
4/54 thru 4/54	6/1/89	120.45	240.90	481.80	963.60	2409.00	4818.00	48180	8.25	8.25	7.66
5/54 thru 5/54	7/1/89	120.45	240.90	481.80	963.60	2409.00	4818.00	48180	8.25	8.25	7.66
6/54 thru 8/54	8/1/89	120.77	241.54	483.08	966.16	2415.40	4830.80	48308	8.25	8.25	7.65
9/54 thru 9/54	5/1/89	116.97	233.94	467.88	935.76	2339.40	4678.80	46788	8.25	8.25	7.73
10/54 thru 10/54	6/1/89	118.52	237.04	474.08	948.16	2370.40	4740.80	47408	8.25	8.25	7.73
11/54 thru 11/54	7/1/89	118.52	237.04	474.08	948.16	2370.40	4740.80	47408	8.25	8.25	7.73
12/54 thru 2/55	8/1/89	118.81	237.62	475.24	950.48	2376.20	4752.40	47524	8.25	8.25	7.81
3/55 thru 3/55	5/1/89	115.04	230.08	460.16	920.32	2300.80	4601.60	46016	8.25	8.25	7.81
4/55 thru 4/55	6/1/89	116.55	233.10	466.20	932.40	2331.00	4662.00	46620	8.25	8.25	7.81
5/55 thru 5/55	7/1/89	116.55	233.10	466.20	932.40	2331.00	4662.00	46620	8.25	8.25	7.81
6/55 thru 8/55	8/1/89	116.85	233.70	467.40	934.80	2337.00	4674.00	46740	8.25	8.25	7.86
9/55 thru 9/55	5/1/89	113.18	226.36	452.72	905.44	2263.60	4527.20	45272	8.25	8.25	7.88
10/55 thru 10/55	6/1/89	114.70	229.40	458.80	917.60	2294.00	4588.00	45880	8.25	8.25	7.88
11/55 thru 11/55	7/1/89	114.70	229.40	458.80	917.60	2294.00	4588.00	45880	8.25	8.25	7.88
12/55 thru 2/56	8/1/89	114.99	229.98	459.96	919.92	2299.80	4599.60	45996	8.25	8.25	7.89
3/56 thru 3/56	5/1/89	111.37	222.74	445.48	890.96	2227.40	4454.80	44548	8.25	8.25	7.96
4/56 thru 4/56	6/1/89	114.50	229.00	458.00	916.00	2290.00	4580.00	45800	8.25	8.25	7.96
5/56 thru 5/56	7/1/89	114.50	229.00	458.00	916.00	2290.00	4580.00	45800	8.25	8.25	7.96
6/56 thru 8/56	8/1/89	114.75	229.50	459.00	918.00	2295.00	4590.00	45900	8.25	8.25	7.96
9/56 thru 9/56	5/1/89	111.13	222.26	444.52	889.04	2222.60	4445.20	44452	8.25	8.25	8.04
10/56 thru 10/56	6/1/89	112.42	224.84	449.68	899.36	2248.40	4496.80	44968	8.25	8.25	8.04
11/56 thru 11/56	7/1/89	112.42	224.84	449.68	899.36	2248.40	4496.80	44968	8.25	8.25	8.04
12/56 thru 1/57	8/1/89	113.08	226.16	452.32	904.64	2261.60	4523.20	45232	8.25	8.25	8.03
2/57 thru 5/57	7/1/89	114.62	229.24	458.48	916.96	2292.40	4584.80	45848	8.25	8.25	7.96

[1] Accrual date shown is for bonds of the first issue date listed—add one month for each successive month of issue.

[2] Actual investment yield (annual percentage rate) from date of issue or beginning of first accrual period on or after November 1, 1982, whichever is later, to the accrual date shown.

[3] Market based variable investment yield (annual percentage rate) from date of issue or beginning of first accrual period on or after November 1, 1982, whichever is later, to the accrual date shown.

[4] Guaranteed minimum yield (annual percentage rate) from date of issue or beginning of first accrual period on or after November 1, 1982, whichever is later, to the accrual date shown.

Note: Additional investment information is obtained from Federal Reserve Banks and Bureau of the Public Debt, Savings Bond Operations Office, 200 Third St., Parkersburg, WV 26102-1328.

U.S. Savings Bonds, Series E—Redemption Values and Investment Yields for Accural Dates Occurring May 1, 1989 Thru October 1, 1989

Issue price		$18.75	$37.50	$75.00	$150.00	$375.00	$750.00	$7500			
Denomination		25.00	50.00	100.00	200.00	500.00	1000.00	10000			
Issue dates	Accrual date [1]	Redemption values during half-year period following accrual date (values increase on first day of period)							Actual yield [2] (percent)	Market yield [3] (percent)	Minimum yield [4] (percent)
6/57 thru 6/57	5/1/89	111.49	222.98	445.96	891.92	2229.80	4459.60	44596	8.25	8.25	8.04
7/57 thru 7/57	6/1/89	112.77	225.54	451.08	902.16	2255.40	4510.80	45108	8.25	8.25	8.04

Issue dates	Accrual date [1]	Redemption values during half-year period following accrual date (values increase on first day of period)							Actual yield [2] (percent)	Market yield [3] (percent)	Minimum yield [4] (percent)
8/57 thru 11/57	7/1/89	112.77	225.54	451.08	902.16	2255.40	4510.80	45108	8.25	8.25	8.04
12/57 thru 12/57	5/1/89	109.70	219.40	438.80	877.60	219.00	4388.00	43880	8.25	8.25	7.53
1/58 thru 1/58	6/1/89	111.00	222.00	444.00	888.00	2220.00	4440.00	44400	8.25	8.25	7.53
2/58 thru 5/58	7/1/89	111.00	222.00	444.00	888.00	2220.00	4440.00	44400	8.25	8.25	7.53
6/58 thru 6/58	5/1/89	107.95	215.90	431.80	863.60	2159.00	4318.00	43180	8.25	8.25	7.73
7/58 thru 7/58	6/1/89	109.21	218.42	436.84	873.68	2184.20	4368.40	43684	8.25	8.25	7.72
8/58 thru 11/58	7/1/89	109.21	218.42	436.84	873.68	2184.20	4368.40	43684	8.25	8.25	7.72
12/58 thru 12/58	5/1/89	106.23	212.46	424.92	849.84	2124.60	4249.20	42492	8.25	8.25	7.92
1/59 thru 1/59	6/1/89	107.50	215.00	430.00	860.00	2150.00	4300.00	43000	8.25	8.25	7.92
2/59 thru 5/59	7/1/89	107.50	215.00	430.00	860.00	2150.00	4300.00	43000	8.25	8.25	7.92
6/59 thru 7/59	9/1/89	107.19	214.38	428.76	857.52	2143.80	4287.60	42876	8.25	8.25	7.53
8/59 thru 8/59	5/1/89	103.81	207.62	415.24	840.48	2076.20	4152.40	41524	8.25	8.25	7.73
9/59 thru 9/59	6/1/89	104.98	209.96	419.92	839.84	2099.60	4199.20	41992	8.25	8.25	7.72
10/59 thru 11/59	7/1/89	104.98	209.96	419.92	839.84	2099.60	4199.20	41992	8.25	8.25	7.72
12/59 thru 1/60	9/1/89	105.20	210.40	420.80	841.60	2104.00	4208.00	42080	8.25	8.25	7.73
2/60 thru 2/60	5/1/89	101.90	203.80	407.60	815.20	2038.00	4076.00	40760	8.25	8.25	7.92
3/60 thru 3/60	6/1/89	103.07	206.14	412.28	824.56	2061.40	4122.80	41228	8.25	8.25	7.92
4/60 thru 5/60	7/1/89	103.07	206.14	412.28	824.56	2061.40	4122.80	41228	8.25	8.25	7.92
6/60 thru 7/60	9/1/89	103.24	206.48	412.96	825.92	2064.80	4129.60	41296	8.25	8.25	7.92
8/60 thru 8/60	5/1/89	100.01	200.02	400.04	800.08	2000.20	4000.40	40004	8.25	8.25	8.11
9/60 thru 9/60	6/1/89	101.16	202.32	404.64	809.28	2023.20	4046.40	40464	8.25	8.25	8.11
10/60 thru 11/60	7/1/89	101.16	202.32	404.64	809.28	2023.20	4046.40	40464	8.25	8.25	8.11
12/60 thru 1/61	9/1/89	101.34	202.68	405.36	810.72	2026.80	4053.60	40536	8.25	8.25	8.11
2/61 thru 2/61	5/1/89	98.50	197.00	394.00	788.00	1970.00	3940.00	39400	8.31	8.25	8.31
3/61 thru 3/61	6/1/89	99.63	199.26	398.52	797.04	1992.60	3985.20	39852	8.31	8.25	8.31
4/61 thru 5/61	7/1/89	99.63	199.26	398.52	797.04	1992.60	3985.20	39852	8.31	8.25	8.31
6/61 thru 7/61	9/1/89	99.92	199.84	399.68	799.36	1998.40	3996.80	39968	8.31	8.25	8.31
8/61 thru 8/61	5/1/89	97.95	195.90	391.80	783.60	1959.00	3918.00	39180	8.50	8.25	8.50
9/61 thru 9/61	6/1/89	99.04	198.08	396.16	792.32	1980.80	3961.60	39616	8.50	8.25	8.50
10/61 thru 11/61	7/1/89	99.04	198.08	396.16	792.32	1980.80	3961.60	39616	8.50	8.25	8.50
12/61 thru 1/62	9/1/89	99.32	198.64	397.28	794.56	1986.40	3972.80	39728	8.50	8.25	8.50
2/62 thru 2/62	5/1/89	96.20	192.40	384.80	769.60	1924.00	3484.00	38480	8.50	8.25	8.50
3/62 thru 3/62	6/1/89	96.89	193.78	387.56	775.12	1937.80	3875.60	38756	8.50	8.25	8.50
4/62 thru 5/62	7/1/89	96.89	193.78	387.56	775.12	1937.80	3875.60	38756	8.50	8.25	8.50
6/62 thru 7/62	9/1/89	97.13	194.26	388.52	777.04	1942.60	3885.20	38852	8.50	8.25	8.50
8/62 thru 8/62	5/1/89	94.08	188.16	376.32	752.64	1881.60	3763.20	37632	8.50	8.25	8.50
9/62 thru 9/62	6/1/89	94.74	189.48	378.96	757.92	1894.80	3789.60	37896	8.50	8.25	8.50

[1] Accrual date shown is for bonds of the first issue date listed—add one month for each successive month of issue.

[2] Actual investment yield (annual percentage rate) from date of issue or beginning of first accrual period on or after November 1, 1982, whichever is later, to the accrual date shown.

[3] Market based variable investment yield (annual percentage rate) from date of issue or beginning of first accrual period on or after November 1, 1982, whichever is later, to the accrual date shown.

[4] Guaranteed minimum yield (annual percentage rate) from date of issue or beginning of first accrual period on or after November 1, 1982, whichever is later, to the accrual date shown.

Note: Additional investment information is obtainable from federal reserve banks and the bureau of the public debt, savings bond operations office, 200 Third St., Parkersburg, WV 26102-1328.

U.S. Savings Bonds, Series E—Redemption Values and Investment Yields for Accrual Dates Occurring May 1, 1989 Thru October 1, 1989

Issue price		$18.75	$37.50	$75.00	$150.00	$750.00	$75.00	$75.00			
Denomination		25.00	50.00	100.00	200.00	500.00	1000.00	10000			
Issue dates	Accrual date [1]	Redemption values during half-year period following accrual date (values increase on first day of period)							Actual yield [2] (percent)	Market yield [3] (percent)	Minimum yield [4] (percent)
10/62 thru 11/62	7/1/89	94.74	189.48	378.96	757.92	1894.80	3789.60	37896	8.50	8.50	8.50
12/62 thru 1/63	9/1/89	95.14	190.28	380.56	761.12	1902.80	3805.60	38056	8.50	8.50	8.50
2/63 thru 2/63	5/1/89	92.14	184.28	368.56	737.12	1842.80	3685.60	36856	8.50	8.50	8.50
3/63 thru 3/63	6/1/89	92.56	185.12	370.24	740.48	1851.20	3702.40	37024	8.50	8.50	8.50
4/63 thru 5/63	7/1/89	92.56	185.12	370.24	740.48	1851.20	3702.40	37024	8.50	8.50	8.50
6/63 thru 7/63	9/1/89	93.28	186.56	373.12	746.24	1865.60	3731.20	37312	8.50	8.50	8.50
8/63 thru 8/63	5/1/89	90.33	180.66	361.32	722.64	1806.60	3613.20	36132	8.50	8.50	8.50
9/63 thru 9/63	6/1/89	90.76	181.52	363.04	726.08	1815.20	3630.40	36304	8.50	8.50	8.50
10/63 thru 11/63	7/1/89	90.76	181.52	363.04	726.08	1815.20	3630.40	36304	8.50	8.50	8.50

[1] Accrual date shown is for bonds of the first issue date listed—add one month for each successive month of issue.

[2] Actual investment yield (annual percentage rate) from date of issue or beginning of first accrual period on or after November 1, 1982, whichever is later, to the accrual date shown.

[3] Market based variable investment yield (annual percentage rate) from date of issue or beginning of first accrual period on or after November 1, 1982, whichever is later, to the accrual date shown.

[4] Guaranteed minimum yield (annual percentage rate) from date of issue or beginning of first accrual period on or after November 1, 1982, whichever is later, to the accrual date shown.

Note: Additional investment information is obtainable from Federal Reserve Banks and the Bureau of the Public Debt, Savings Bond Operations Office, 200 Third St., Parkersbury, WV 26102-1328.

U.S. Savings Bonds, Series E—Redemption Values and Investment Yields for Accrual Dates Occurring May 1, 1989 Thru October 1, 1989

Issue Price		$18.75	$37.50	$56.25	$75.00	$150.00	$375.00	$750.00	$7500			
Denomination		25.00	50.00	75.00	100.00	200.00	500.00	1000.00	10000			
Issue dates	Accrual date[1]	Redemption values during half-year period following accrual date (values increase on first day of period)								Actual yield[2] (percent)	Market yield[3] (percent)	Minimum yield[4] (percent)
12/63 thru 1/64	9/1/89	91.34	182.68	274.02	365.36	730.72	1826.80	3653.60	36536	8.50	8.25	8.50
2/64 thru 2/64	5/1/89	88.46	176.92	265.38	353.84	707.68	1769.20	3538.40	35384	8.50	8.25	8.50
3/64 thru 3/64	6/1/89	88.89	177.78	266.67	355.56	711.12	1777.80	3555.60	35556	8.50	8.25	8.50
4/64 thru 5/64	7/1/89	88.89	177.78	266.67	355.56	711.12	1777.80	3555.60	35556	8.50	8.25	8.50
6/64 thru 7/64	9/1/89	89.47	178.94	268.41	357.88	715.76	1789.40	3578.80	35788	8.50	8.25	8.50
8/64 thru 8/64	5/1/89	86.64	173.28	259.92	346.56	693.12	1732.80	3465.60	34656	8.50	8.25	8.50
9/64 thru 9/64	6/1/89	87.07	174.14	261.21	348.28	696.56	1741.40	3482.80	34828	8.50	8.25	8.50
10/64 thru 11/64	7/1/89	87.07	174.14	261.21	348.28	696.56	1741.40	3482.80	34828	8.50	8.25	8.50
12/64 thru 1/65	9/1/89	87.63	175.26	262.89	350.52	701.04	1752.60	3505.20	35052	8.50	8.25	8.50
2/65 thru 2/65	5/1/89	83.55	167.10	250.65	334.20	668.40	1671.00	3342.00	33420	8.25	8.25	7.50
3/65 thru 3/65	6/1/89	83.96	167.92	251.88	335.84	671.68	1679.20	3358.40	33584	8.25	8.25	7.50
4/65 thru 5/65	7/1/89	83.96	167.92	251.88	335.84	671.68	1679.20	3358.40	33584	8.25	8.25	7.50
6/65 thru 7/65	9/1/89	84.41	168.82	253.23	337.64	675.28	1688.20	3376.40	33764	8.25	8.25	7.50
8/65 thru 8/65	5/1/89	81.76	163.52	245.28	327.04	654.08	1635.20	3270.40	32704	8.25	8.25	7.58
9/65 thru 9/65	6/1/89	82.18	164.36	246.54	328.72	657.44	1643.60	3287.20	32872	8.25	8.25	7.57
10/65 thru 11/65	7/1/89	82.18	164.36	246.54	328.72	657.44	1643.60	3287.20	32872	8.25	8.25	7.57
12/65 thru 12/65	6/1/89	82.43	164.86	247.29	329.72	659.44	1648.60	3297.20	32972	8.25	8.25	7.50
1/66 thru 4/66	7/1/89	82.43	164.86	247.29	329.72	659.44	1648.60	3297.20	32972	8.25	8.25	7.50
5/66 thru 5/66	5/1/89	79.85	159.70	239.55	319.40	638.80	1597.00	3194.00	31940	8.25	8.25	7.57
6/66 thru 6/66	6/1/89	80.66	161.32	241.98	322.64	645.28	1613.20	3226.40	32264	8.25	8.25	7.58
7/66 thru 10/66	7/1/89	80.66	161.32	241.98	322.64	645.28	1613.20	3226.40	32264	8.25	8.25	7.58
11/66 thru 11/66	5/1/89	78.12	156.24	234.36	312.48	624.96	1562.40	3124.80	31248	8.25	8.25	7.65
12/66 thru 12/66	6/1/89	78.98	157.96	236.94	315.92	631.84	1579.60	3159.20	31592	8.25	8.25	7.66
1/67 thru 4/67	7/1/89	78.98	157.96	236.94	315.92	631.84	1579.60	3159.20	31592	8.25	8.25	7.66
5/67 thru 5/67	5/1/89	76.48	152.96	229.44	305.92	611.84	1529.60	3059.20	30592	8.25	8.25	7.74
6/67 thru 6/67	6/1/89	77.34	154.68	232.02	309.36	618.72	1546.80	3093.60	30936	8.25	8.25	7.73
7/67 thru 10/67	7/1/89	77.34	154.68	232.02	309.36	618.72	1546.80	3093.60	30936	8.25	8.25	7.73
11/67 thru 11/67	5/1/89	74.92	149.84	224.76	299.68	599.36	1498.40	2996.80	29968	8.25	8.25	7.81
12/67 thru 12/67	6/1/89	75.82	151.64	227.46	303.28	606.56	1516.40	3032.80	30328	8.25	8.25	7.81
1/68 thru 4/68	7/1/89	75.82	151.64	227.46	303.28	606.56	1516.40	3032.80	30328	8.25	8.25	7.81
5/68 thru 5/68	5/1/89	73.44	146.88	220.32	293.76	587.52	1468.80	2937.60	29376	8.25	8.25	7.89
6/68 thru 6/68	6/1/89	74.31	148.62	222.93	297.24	594.48	1486.20	2972.40	29724	8.25	8.25	7.89
7/68 thru 10/68	7/1/89	74.31	148.62	222.93	297.24	594.48	1486.20	2972.40	29724	8.25	8.25	7.89
11/68 thru 11/68	5/1/89	71.96	143.92	215.88	287.84	575.68	1439.20	2878.40	28784	8.25	8.25	7.96
12/68 thru 12/68	6/1/89	72.96	145.92	218.88	291.84	583.68	1459.20	2918.40	29184	8.25	8.25	7.96
1/69 thru 4/69	7/1/89	72.96	145.92	218.88	291.84	583.68	1459.20	2918.40	29184	8.25	8.25	7.96
5/69 thru 5/69	5/1/89	70.66	141.32	211.98	282.64	565.28	1413.20	2826.40	28264	8.25	8.25	8.04
6/69 thru 6/69	10/1/89	73.57	147.14	220.71	294.28	588.56	1471.40	2942.80	29428	8.25	8.25	7.81
7/69 thru 7/69	5/1/89	71.24	142.48	213.72	284.96	569.92	1424.80	2849.60	28496	8.25	8.25	7.89

[1] Accrual date shown is for bonds of the first issue date listed—add one month for each successive month of issue.
[2] Actual investment yield (annual percentage rate) from date of issue or beginning of first accrual period on or after November 1, 1982, whichever is later, to the accrual date shown.
[3] Market based variable investment yield (annual percentage rate) from date of issue or beginning of first accrual period on or after November 1, 1982, whichever is later, to the accrual date shown.
[4] Guaranteed minimum yield (annual percentage rate) from date of issue or beginning of first accrual period on or after November 1, 1982, whichever is later, to the accrual date shown.

Note: Additional investment information is obtainable from Federal Reserve Banks and the Bureau of the Public Debt, Savings Bond Operations Office, 200 Third St., Parkersburg, WV 26102-1328.

U.S. Saving Bonds, Series E—Redemption Values and Investment Yields for Accrual Dates Occurring May 1, 1989 Thru October 1, 1989

Issue price		$18.75	$37.50	$56.25	$75.00	$150.00	$375.00	$750.00	$7500.			
Denomination		25.00	50.00	75.00	100.00	200.00	500.00	1000.00	10000.			
Issue dates	Accrual date[1]	Redemption values during half-year period following accrual date (values increase on first day of period)								Actual yield[2] (percent)	Market yield[3] (percent)	Minimum yield[4] (percent)
8/69 thru 8/69	6/1/89	71.42	142.84	214.26	285.68	571.36	1428.40	2856.80	28568.	8.25	8.25	7.88
9/69 thru 11/69	7/1/89	71.42	142.84	214.26	285.68	571.36	1428.40	2856.80	28568.	8.25	8.25	7.88

Issue dates	Accrual date [1]	Redemption values during half-year period following accrual date (values increase on first day of period)								Actual yield [2] (percent)	Market yield [3] (percent)	Minimum yield [4] (percent)
12/69 thru 12/69	10/1/89	71.79	143.58	215.37	287.16	574.32	1435.80	2871.60	28716.	8.25	8.25	7.88
1/70 thru 1/70	5/1/89	69.55	139.10	208.65	278.20	556.40	1391.00	2782.00	27820.	8.25	8.25	7.96
2/70 thru 2/70	6/1/89	69.70	139.40	209.10	278.80	557.60	1394.00	2788.00	27880.	8.25	8.25	7.96
3/70 thru 5/70	7/1/89	69.70	139.40	209.10	278.80	557.60	1394.00	2788.00	27880.	8.25	8.25	7.96
6/70 thru 6/70	10/1/89	70.02	140.04	210.06	280.08	560.16	1400.40	2800.80	28008.	8.25	8.25	7.96
7/70 thru 7/70	5/1/89	67.82	135.64	203.46	271.28	542.56	1356.40	2712.80	27128.	8.25	8.25	8.04
8/70 thru 8/70	6/1/89	68.01	136.02	204.03	272.04	544.08	1360.20	2720.40	27204.	8.25	8.25	8.04
9/70 thru 11/70	7/1/89	68.01	136.02	204.03	272.04	544.08	1360.20	2720.40	27204.	8.25	8.25	8.04
12/70 thru 12/70	10/1/89	68.14	136.28	204.42	272.56	545.12	1362.80	2725.60	27256.	8.25	8.25	8.04
1/71 thru 1/71	5/1/89	66.01	132.02	198.03	264.04	528.08	1320.20	2640.40	26404.	8.25	8.25	7.53
2/71 thru 2/71	6/1/89	66.16	132.32	198.48	264.64	529.28	1323.20	2646.40	26464.	8.25	8.25	7.53
3/71 thru 5/71	7/1/89	66.16	132.32	198.48	264.64	529.28	1323.20	2646.40	26464.	8.25	8.25	7.53
6/71 thru 6/71	10/1/89	66.35	132.70	199.05	265.40	530.80	1327.00	2654.00	26540.	8.25	8.25	7.54
7/71 thru 7/71	5/1/89	64.25	128.50	192.75	257.00	514.00	1285.00	2570.00	25700.	8.25	8.25	7.73
8/71 thru 8/71	6/1/89	64.40	128.80	193.20	257.60	515.20	1288.00	2576.00	25760.	8.25	8.25	7.72
9/71 thru 11/71	7/1/89	64.40	128.80	193.20	257.60	515.20	1288.00	2576.00	25760.	8.25	8.25	7.72
12/71 thru 12/71	10/1/89	64.56	129.12	193.68	258.24	516.48	1291.20	2582.40	25824.	8.25	8.25	7.73
1/72 thru 1/72	5/1/89	62.53	125.06	187.59	250.12	500.24	1250.60	2501.20	25012.	8.25	8.25	7.92
2/72 thru 2/72	6/1/89	62.68	125.36	188.04	250.72	501.44	1253.60	2507.20	25072.	8.25	8.25	7.92
3/72 thru 5/72	7/1/89	62.68	125.36	188.04	250.72	501.44	1253.60	2507.20	25072.	8.25	8.25	7.92
6/72 thru 6/72	10/1/89	62.85	125.70	188.55	251.40	502.80	1257.00	2514.00	25140.	8.25	8.25	7.92
7/72 thru 7/72	5/1/89	60.89	121.78	182.67	243.56	487.12	1217.80	2435.60	24356.	8.25	8.25	8.11
8/72 thru 8/72	6/1/89	61.02	122.04	183.06	244.08	488.16	1220.40	2440.80	24408.	8.25	8.25	8.11
9/72 thru 11/72	7/1/89	61.02	122.04	183.06	244.08	488.16	1220.40	2440.80	24408.	8.25	8.25	8.11
12/72 thru 12/72	10/1/89	61.14	122.28	183.42	244.56	489.12	1222.80	2445.60	24456.	8.25	8.25	8.11
1/73 thru 1/73	5/1/89	59.42	118.84	178.26	237.68	475.36	1188.40	2376.80	23768.	8.31	8.25	8.31
2/73 thru 2/73	6/1/89	59.58	119.16	178.74	238.32	476.64	1191.60	2383.20	23832.	8.31	8.25	8.31
3/73 thru 5/73	7/1/89	59.58	119.16	178.74	238.32	476.64	1191.60	2383.20	23832.	8.31	8.25	8.31
6/73 thru 6/73	10/1/89	59.71	119.42	179.13	238.84	477.68	1194.20	2388.40	23884.	8.31	8.25	8.31
7/73 thru 7/73	5/1/89	58.53	117.06	175.59	234.12	468.24	1170.60	2341.20	23412.	8.50	8.25	8.50
8/73 thru 8/73	6/1/89	58.67	117.34	176.01	234.68	469.36	1173.40	2346.80	23468.	8.50	8.25	8.50
9/73 thru 11/73	7/1/89	58.67	117.34	176.01	234.68	469.36	1173.40	2346.80	23468.	8.50	8.25	8.50
12/73 thru 12/73	6/1/89	57.01	114.02	171.03	288.04	456.08	1140.20	2280.40	22804.	8.31	8.25	8.31
1/74 thru 4/74	7/1/89	57.01	114.02	171.03	228.04	456.08	1140.20	2280.40	22804.	8.31	8.25	8.31
5/74 thru 5/74	5/1/89	55.89	111.78	167.67	223.56	447.12	1117.80	2235.60	22356.	8.50	8.25	8.50
6/74 thru 6/74	6/1/89	56.02	112.04	168.06	224.08	448.16	1120.40	2240.80	22408.	8.50	8.25	8.50
7/74 thru 10/74	7/1/89	56.02	112.04	168.06	224.08	448.16	1120.40	2240.80	22408.	8.50	8.25	8.50

[1] Accrual date shown is for bonds of the first issue date listed—add on month for each successive month of issue.

[2] Actual investment yield (annual percentage rate) from date of issue or beginning of first accrual period on or after November 1, 1982, whichever is later, to the accrual date shown.

[3] Market based variable investment yield (annual percentage rate) from date of issue or beginning of first accrual period on or after November 1, 1982, whichever is later, for the accrual date shown.

[4] Guaranteed minimum yield (annual percentage rate) from date of issue or beginning of first accrual period on or after November 1, 1982, whichever is later, to the accrual date shown.

Note: Additional investment information is obtainable from Federal Reserve Banks and the Bureau of the Public Debt, Savings Bond Operations Office, 200 Third St., Parkersburg, WV 26102-1328.

U.S. Savings Bonds, Series E—Redemption Values and Investment Yields For Accrual Dates Occurring May 1, 1989 Thru October 1, 1989

Issue price		$18.75	$37.50	$56.25	$75.00	$150.00	$375.00	$750.00	$7500.			
Denomination		25.00	50.00	75.00	100.00	200.00	500.00	1000.00	10000.			

Issue dates	Accrual date [1]	Redemption values during half-year period following accrual date (values increase on first day of period)								Actual yield [2] (percent)	Market yield [3] (percent)	Minimum yield [4] (percent)
11/74 thru 11/74	5/1/89	54.25	108.50	162.75	217.00	434.00	1085.00	2170.00	21700.	8.50	8.25	8.50
12/74 thru 12/74	6/1/89	54.38	108.76	163.14	217.52	435.04	1087.60	2175.20	21752.	8.50	8.25	8.50
1/75 thru 4/75	7/1/89	54.38	108.76	163.14	217.52	435.04	1087.60	2175.20	21752.	8.50	8.25	8.50
5/75 thru 5/75	5/1/89	52.66	105.32	157.98	210.64	421.28	1053.20	2106.40	21064.	8.50	8.25	8.50
6/75 thru 6/75	6/1/89	52.79	105.58	158.37	211.16	422.32	1055.80	2111.60	21116.	8.50	8.25	8.50
7/75 thru 10/75	7/1/89	52.79	105.58	158.37	211.16	422.32	1055.80	2111.60	21116.	8.50	8.25	8.50
11/75 thru 11/75	5/1/89	51.13	102.26	153.39	204.52	409.04	1022.60	2045.20	20452.	8.50	8.25	8.50
12/75 thru 12/75	6/1/89	51.24	102.48	153.72	204.96	409.92	1024.80	2049.60	20496.	8.50	8.25	8.50
1/76 thru 4/76	7/1/89	51.24	102.48	153.72	204.96	409.92	1024.80	2049.60	20496.	8.50	8.25	8.50
5/76 thru 5/76	5/1/89	49.63	99.26	148.89	198.52	397.04	992.60	1985.20	19852.	8.50%	8.25%	8.50%
6/76 thru 6/76	6/1/89	49.74	99.48	149.22	198.96	397.92	994.80	1989.60	19896.	8.50	8.25	8.50

Issue dates	Accrual date[1]	Redemption values during half-year period following accrual date (values increase on first day of period)								Actual yield[2] (percent)	Market yield[3] (percent)	Minimum yield[4] (percent)
7/76 thru 10/76...	7/1/89	49.74	99.48	149.22	198.96	397.92	994.80	1989.60	19896.	8.50	8.25	8.50
11/76 thru 11/76.....	5/1/89	48.17	96.34	144.51	192.68	385.36	963.40	1926.80	19268.	8.50	8.25	8.50
12/76 thru 12/76.....	6/1/89	48.30	96.60	144.90	193.20	386.40	966.00	1932.00	19320.	8.50	8.25	8.50
1/77 thru 4/77.....	7/1/89	48.30	96.60	144.90	193.20	386.40	966.00	1932.00	19320.	8.50	8.25	8.50
5/77 thru 5/77.....	5/1/89	46.78	93.56	140.34	187.12	374.24	935.60	1871.20	18712.	8.50	8.25	8.50
6/77 thru 6/77.....	6/1/89	46.90	93.80	140.70	187.60	375.20	938.00	1876.00	18760.	8.50	8.25	8.50
7/77 thru 10/77...	7/1/89	46.90	93.80	140.70	187.60	375.20	938.00	1876.00	18760.	8.50	8.25	8.50
11/77 thru 11/77.....	5/1/89	44.70	89.40	134.10	178.80	357.60	894.00	1788.00	17880.	8.25	8.25	7.50
12/77 thru 12/77.....	6/1/89	44.82	89.64	134.46	179.28	358.56	896.40	1792.80	17928.	8.25	8.25	7.50
1/78 thru 4/78.....	7/1/89	44.82	89.64	134.46	179.28	358.56	896.40	1792.80	17928.	8.25	8.25	7.50
5/78 thru 5/78.....	5/1/89	41.61	83.22	124.83	166.44	332.88	832.20	1664.40	16644.	8.33	8.25	8.33
6/78 thru 6/78.....	6/1/89	41.72	83.44	125.16	166.88	333.76	834.40	1668.80	16688.	8.37	8.25	8.37
7/78 thru 10/78...	7/1/89	41.72	83.44	125.16	166.88	333.76	834.40	1668.80	16688.	8.37	8.25	8.37
11/78 thru 11/78.....	5/1/89	40.60	81.20	121.80	162.40	324.80	812.00	1624.00	16240.	8.41	8.25	8.41
12/78 thru 12/78.....	6/1/89	40.70	81.40	122.10	162.80	325.60	814.00	1628.00	16280.	8.45	8.25	8.45
1/79 thru 4/79.....	7/1/89	40.70	81.40	122.10	162.80	325.60	814.00	1628.00	16280.	8.45	8.25	8.45
5/79 thru 5/79.....	5/1/89	39.62	79.24	118.86	158.48	316.96	792.40	1584.80	15848.	8.49	8.25	8.49
6/79 thru 6/79.....	6/1/89	39.71	79.42	119.13	158.84	317.68	794.20	1588.40	15884.	8.52	8.25	8.52
7/79 thru 10/79...	7/1/89	39.71	79.42	119.13	158.84	317.68	794.20	1588.40	15884.	8.52	8.25	8.52
11/79 thru 11/79.....	5/1/89	38.64	77.28	115.92	154.56	309.12	772.80	1545.60	15456.	8.52	8.25	8.52
12/79 thru 12/79.....	6/1/89	38.64	77.28	115.92	154.56	309.12	772.80	1545.60	15456.	8.52	8.25	8.52
1/80 thru 4/80.....	7/1/89	38.64	77.28	115.92	154.56	309.12	772.80	1545.60	15456.	8.52	8.25	8.52
5/80 thru 5/80.....	5/1/89	37.62	75.24	112.86	150.48	300.96	752.40	1504.80	15048.	8.51	8.25	8.51
6/80 thru 6/80.....	6/1/89	37.62	75.24	112.86	150.48	300.96	752.40	1504.80	15048.	8.51	8.25	8.51

[1] Accrual date shown is for bonds of the first issue date listed—add one month for each successive month of issue.
[2] Actual investment yield (annual percentage rate) from date of issue or beginning of first accrual period on or after November 1, 1982, whichever is later, to the accrual date shown.
[3] Market based variable investment yield (annual percentage rate) from date of issue or beginning of first accrual period on or after November 1, 1982, whichever is later, to the accrual date shown.
[4] Guaranteed minimum yield (annual percentage rate) from date of issue or beginning of first accrual period on or after November 1, 1982, whichever is later, to the accrual date shown.

Note: Additional investment information is obtainable from Federal Reserve Banks and the Bureau of the Public Debt, Savings Bond Operations Office, 200 Third St., Parkersburg, WV 26102-1328.

U.S. Savings Bonds, Notes—Redemption Values and Investment Yields for Accrual Dates Occurring May 1, 1989 Thru October 1, 1989

Issue price.....				$20.25	$40.50	$60.75	$81.00					
Denomination.....				25.00	50.00	75.00	100.00					
Issue dates	Accrual date[1]	Redemption values during half-year period following accrual date (values increase on first day of period)								Actual yield[2] (percent)	Market yield[3] (percent)	Minimum yield[4] (percent)
5/67 thru 5/67.....	5/1/89			85.34	170.68	256.02	341.36			8.50	8.25	8.50
6/67 thru 6/67.....	6/1/89			85.73	171.46	257.19	342.92			8.50	8.25	8.50
7/67 thru 10/67...	7/1/89			85.73	171.46	257.19	342.92			8.50	8.25	8.50
11/67 thru 11/67.....	5/1/89			83.02	166.04	249.06	332.08			8.50	8.25	8.50
12/67 thru 12/67.....	6/1/89			83.44	166.88	250.32	333.76			8.50	8.25	8.50
1/68 thru 4/68.....	7/1/89			83.44	166.88	250.32	333.76			8.50	8.25	8.50
5/68 thru 5/68.....	5/1/89			79.56	159.12	238.68	318.24			8.25	8.25	7.50
6/68 thru 6/68.....	6/1/89			80.84	161.68	242.52	323.36			8.25	8.25	7.50
7/68 thru 10/68...	7/1/89			80.84	161.68	242.52	323.36			8.25	8.25	7.50
11/68 thru 11/68.....	5/1/89			78.31	156.62	234.93	313.24			8.25	8.25	7.58
12/68 thru 12/68.....	6/1/89			78.73	157.46	236.19	314.92			8.25	8.25	7.57
1/69 thru 4/69.....	7/1/89			78.73	157.46	236.19	314.92			8.25	8.25	7.57
5/69 thru 5/69.....	5/1/89			76.24	152.48	228.72	304.96			8.25	8.25	7.65
6/69 thru 6/69.....	6/1/89			76.60	153.20	229.80	306.40			8.25	8.25	7.66
7/69 thru 10/69...	7/1/89			76.60	153.20	229.80	306.40			8.25	8.25	7.66
11/69 thru 11/69.....	5/1/89			74.21	148.42	222.63	296.84			8.25	8.25	7.73
12/69 thru 12/69.....	6/1/89			74.55	149.10	223.65	298.20			8.25	8.25	7.73
1/70 thru 4/70.....	7/1/89			74.55	149.10	223.65	298.20			8.25	8.25	7.73
5/70 thru 5/70.....	5/1/89			72.22	144.44	216.66	288.88			8.25	8.25	7.81

Issue dates	Accrual date [1]	Redemption values during half-year period following accrual date (values increase on first day of period)								Actual yield [2] (percent)	Market yield [3] (percent)	Minimum yield [4] (percent)
6/70 thru 6/70.....	6/1/89			72.54	145.08	217.62	290.16			8.25	8.25	7.81
7/70 thru 10/70...	7/1/89			72.54	145.08	217.62	290.16			8.25	8.25	7.81

[1] Accrual date shown is for bonds of the first issue date listed—add one month for each successive month of issue.
[2] Actual investment yield (annual percentage rate) from date of issue or beginning of first accrual period on or after November 1, 1982, whichever is later, to the accrual date shown.
[3] Market based variable investment yield (annual percentage rate) from date of issue or beginning of first accrual period on or after November 1, 1982, whichever is later, to the accrual date shown.
[4] Guaranteed minimum yield (annual percentage rate) from date of issue or beginning of first accrual period on or after November 1, 1982, whichever is later, to the accrual date shown.
Note: Additional investment information is obtainable from Federal Reserve Banks and the Bureau of the Public Debt, Savings Bond Operations Office, 200 Third St., Parkersburg, WV 26102-1328.

U.S. SAVINGS BONDS, SERIES E—REDEMPTION VALUES AND INVESTMENT YIELDS FOR ACCRUAL DATES OCCURRING MAY 1, 1989 THRU OCTOBER 1, 1989

Issue price		$25.00	$37.50	$50.00	$100.00	$250.00	$500.00	$2,500.00	$5,000.00			
Denomination		50.00	75.00	100.00	200.00	500.00	1,000.00	5,000.00	10,000			
Issue dates	Accrual date [1]	Redemption values during half-year period following accrual date (values increase on first day of period)								Actual yield [2] (percent)	Market yield [3] (percent)	Minimum (percent)
1/80 thru 4/80.....	7/1/89	56.30	84.45	112.60	225.20	563.00	1,126.00	5,630.00	11,260.	9.70	8.25	9.70
5/80 thru 10/80...	5/1/89	54.40	81.60	108.80	217.60	544.00	1,088.00	5,440.00	10,880.	9.67	8.25	9.67
11/80 thru 4/81...	5/1/89	52.58	78.87	105.16	210.32	525.80	1,051.60	5,258.00	10,516.	9.61	8.25	9.61
5/81 thru 10/81...	5/1/89	50.56	75.84	101.12	202.24	505.60	1,011.20	5,056.00	10,112.	9.64	8.25	9.64
11/81 thru 4/82...	5/1/89	48.14	72.21	96.28	192.56	481.40	962.80	4,814.00	9,628.	9.39	8.25	9.39
5/82 thru 10/82...	5/1/89	45.86	68.79	91.72	183.44	458.60	917.20	4,586.00	9,172.	9.24	8.25	9.24
11/82 thru 4/83...	5/1/89	42.30	63.45	84.60	169.20	423.00	846.00	4,230.00	8,460.	8.26	8.25	7.51
5/83 thru 10/83...	5/1/89	40.04	60.06	80.08	160.16	400.40	800.80	4,004.00	8,008.	8.01	8.00	7.51
11/83 thru 4/84...	5/1/89	38.50	57.75	77.00	154.00	385.00	770.00	3,850.00	7,700.	8.01	8.00	7.51
5/84 thru 10/84...	5/1/89	37.02	55.53	74.04	148.08	370.20	740.40	3,702.00	7,404.	8.01	8.00	7.51

[1] Accrual date shown is for bonds of the first issue date listed—add one month for each successive month of issue.
[2] Actual investment yield (annual percentage rate) from date of issue or beginning of first accrual period on or after November 1, 1982, whichever is later, to the accrual date shown.
[3] Market based variable investment yield (annual percentage rate) from date of issue or beginning of first accrual period on or after November 1, 1982, whichever is later, to the accrual date shown.
[4] Guaranteed minimum yield (annual percentage rate) from date of issue or beginning of first accrual period on or after November 1, 1982, whichever is later, to the accrual date shown.
Note: Additional investment information is obtainable from Federal Reserve Banks and the Bureau of the Public Debt, Savings Bond Operations Office, 200 Third St., Parkersburg, WV 26102-1328.

[FR Doc. 89-9459 Filed 4-19-89; 8:45 am]
BILLING CODE 4810-40-M

POSTAL SERVICE

39 CFR Part 601

Procurement of Property and Services; Amendments to Procurement Manual

AGENCY: Postal Service.

ACTION: Amendments to procurement manual.

SUMMARY: The Postal Service announces that it is amending the Procurement Manual to conform certain solicitation provisions and contract clauses to Chapter 60 of title 41, Code of Federal Regulations, as requested by the Department of Labor. The purpose of the regulations in Chapter 60 is to insure equal opportunity for all persons, without regard to race, color, religion, sex, or national origin, who are employed or seeking employment with Government contractors or with contractors performing under federally assisted construction contracts. The requested changes have no effect on postal personnel resources or the normal course of postal business.

EFFECTIVE DATE: April 24, 1989.

FOR FURTHER INFORMATION CONTACT: Paul D. McGinn, (202) 268-4638.

SUPPLEMENTARY INFORMATION: The Procurement Manual, which is incorporated by reference in the Code of Federal Regulations (see 39 CFR 601.100), has been amended by the issue of PM Circular 89-1, dated April 24, 1989.

In accordance with 39 CFR 601.105, notice of these changes is hereby published in the **Federal Register** and the text of the changes is filed with the Director, Office of the Federal Register. Subscribers to the basic manual will receive these amendments from the Postal Service. (For other availability of the Procurement Manual, see 39 CFR 601.104.)

List of Subjects in 39 CFR 601

Government procurement, Postal Service, Incorporation by reference.

PART 601—[AMENDED]

The authority citation for Part 601 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 401, 404, 410, 411, 2008, 5001-5605.

Explanation of Changes

A. Provision 10-4 (p. A-18), *Equal Opportunity Affirmative Action Program.* Revised to add a certification as to whether the offeror has filed the required reports with the Joint Reporting Committee.

B. Provision 10-5 (p. A-18), *Preaward Equal Opportunity Compliance Review.* Revised to require, as a condition of award, compliance with 41 CFR 60-1.20 rather than with the *Equal Opportunity Clause.*

C. Clause 10-4 (p. B-90), *Contract Work Hours and Safety Standards Act—Overtime Compensation.*

1. Paragraph c, *Withholding for Unpaid Wages and Liquidated Damages.* Revised to stress that cross-withholding is authorized.

2. Paragraph d, *Records.* (a) Revised to set forth the material regarding records previously incorporated by reference to 29 CFR Part 5; (b) To add a statement on the availability of records for inspection, copying or transcription, and the availability of employees for interviews; (c) To indicate Office of Management and Budget (OMB) approval of Department of Labor (DOL) information collection and recordkeeping requirements.

D. Clause 10–5 (pp. B–91—B–93), *Davis-Bacon Act.*

1. Subparagraph a.1. Revised to specify that the work excluded from coverage must be of a recurring, routine nature.

2. Subparagraph a.3. Revised to specify that contributions made or costs assumed, if not on a weekly basis, must be on a not-less-than-quarterly basis;

3. Subparagraph a.4. Revised to conform to Department of Labor regulations.

4. Subparagraph a.5. Revised to clarify the reporting arrangements and to specify when the contracting officer may approve additional classifications and related wage rates and fringe benefits.

5. New subparagraph a.6. New text listing the actions taken when the parties cannot agree on the proper classification of a class of laborers or mechanics, and to indicate OMB approval of DOL information collection and recordkeeping requirements.

6. Paragraph b. Revised to require conformance with Executive Order 11246 and 29 CFR Part 30, and to give details of when trainees may be permitted to work, what wages and benefits apprentices and trainees must receive, and what happens when approval of an apprenticeship or trainee program is withdrawn.

7. Subparagraph c.4. Deleted as superfluous.

8. Subparagraph d.1. Revised to add a reference to social security numbers and to cover apprentices and trainees, and to indicate OMB approval of DOL information collection and recordkeeping requirements.

9. Subparagraph d.2. Revised to clarify language and add a reference to OMB approval for DOL collecting and reporting requirements.

10. Paragraph e. Revised to specify that cross-withholding is authorized.

11. Paragraph h. Revised to clarify language.

12. New paragraph i. New text specifying that breach of this clause may be grounds for termination and debarment.

13. Paragraph j. New text specifying that disputes over labor standards are not subject to the *Claims and Disputes Clause,* but rather must be resolved under DOL procedures in 29 CFR Parts 5, 6, and 7.

E. Clause 10–7 (pp. B–93—B–94), *Contract Work Hours and Safety Standards Act—Safety Standards.* Revised to clarify language and to update reference to the Code of Federal Regulations.

F. Clause 10–12, (pp. B–98—B–104), *Service Contract Act.* Revised to make editorial changes and clarifications.

Fred Eggleston,

Assistant General Counsel, Legislative Division.

[FR Doc. 89–9301 Filed 4–19–89; 8:45 am]

BILLING CODE 7710–12–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[KY–056 and FRL–3556–9]

Approval and Promulgation of Implementation Plans; Kentucky

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA today approves revisions to Appendix N of the Kentucky State Implementation Plan (SIP). Appendix N consists of regulations developed by the Air Pollution Control District of Jefferson County (the District), and applies only in Jefferson County, Kentucky; they are implemented by the District. EPA approval of the regulations enables the District to retain authority for all subject activities in Jefferson County.

EFFECTIVE: This action will be effective June 19, 1989, unless notice is received within 30 days that someone wishes to submit adverse or critical comments. If the effective date is delayed, timely notice will be published in the **Federal Register.**

ADDRESSES: Written comments should be addressed to Richard A. Schutt of EPA Region IV's Air Programs Branch (see EPA Region IV address below). Copies of the material submitted by Kentucky may be examined during normal business hours at the following locations:

Public Information Reference Unit, Library Systems Branch, Environmental Protection Agency, 401 M Street, SW., Washington DC 20460.

Air Programs Branch, Environmental Protection Agency, 345 Courtland Street, Atlanta, Georgia 30365.

Kentucky Department for Environmental Protection, Frankfort Office Park, 18 Reilly Road, Frankfort, Kentucky 40601.

Air Pollution Control, District of Jefferson County, 914 East Broadway, Louisville, Kentucky 40204.

FOR FURTHER INFORMATION CONTACT: Richard A. Schutt of the EPA Region IV Air Programs Branch at 404–347–2864) (FTS–257–2864) and at the above address.

SUPPLEMENTARY INFORMATION: The Air Pollution Control District of Jefferson County (the District) develops and implements air quality regulations in Jefferson County, Kentucky. The District's regulations are at least as stringent as corresponding Kentucky regulations. The District's regulations are incorporated by the State as part of the Kentucky SIP; in this manner, the State has the authority to implement the regulations in Jefferson County if the District cannot.

The SIP revisions affected by today's approval were adopted by the Air Pollution Control Board of Jefferson County on April 20, 1988, and submitted to EPA by Kentucky on January 19, 1989. The regulations being approved by this notice are 3.05, Methods of Measurement, and 4.02, Episode Criteria. Regulation 3.05 establishes the methods to use for measuring air contaminants. This regulation was amended to correct references to federal regulations. With the adoption of the PM_{10} standard for particulate, new methods and standards for measurement were added to 40 CFR Parts 50 and 53 to ensure consistency of measurement. With the incorporation of PM_{10} standards in the Jefferson County regulations, the methods for measurement logically followed.

Regulation 4.02 establishes the criteria to determine air pollution episodes. This regulation was amended to drop TSP and add PM_{10} in all three phases of the episode criteria such that alerts, warnings and emergencies reflect the concentration levels as set forth in 40 CFR Part 51, Appendix L.

EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. This action will be effective June 19, 1989 unless, within 30 days of its publication, notice is received that adverse or critical comments will be submitted.

If such notice is received, this action will be withdrawn before the effective date by publishing two subsequent notices. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period. If no such comments are received, the public is advised that this action will be effective June 19, 1989.

Final Action

EPA is today finalizing approval of revisons to Regulation 3.05 and 4.02 contained in Appendix N of the Kentucky State Implementation Plan. These revisions simply reflect the adoption of the PM_{10} standard for particulates.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Park Order 12291.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 19, 1989. This action may not be challenged later in proceedings to enforce its requirements (see 307(b)(2)).

List of Subjects in 40 CFR Part 52

Air pollution control, Incorporation by reference, Intergovernmental relations.

Note: Incorporation by reference of Kentucky State Implementation Plan was approved by the Director of the Federal Register on July 1, 1982.

Date: April 7, 1989.

Joe R. Franzmathes,

Acting Regional Administrator.

Part 52 of Chapter I, Title 40, Code of Federal Regulations, is amended as follows:

PART 52—[AMENDED]

Subpart S—Kentucky

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. Section 52.920 is amended by adding paragraph (c)(59) to read as follows:

§ 52.920 Identification of plan.

* * * * *

(c) * * *

(59) Revisions to Jefferson County Regulations 3.05, Methods of Measurement, and 4.02, Episode Criteria, submitted on January 19, 1989, by the Kentucky Natural Resources and Environmental Protection Cabinet.

(i) Incorporation by reference.

(A) Revisions to the following Jefferson County Regulations:

3.05. Methods of Measurement

4.02. Episode Criteria—section 2. Air Pollution alerts, section 3. Air Pollution warnings, and section 4. Air Pollution Emergencies.

These revisions became State-effective April 20, 1988.

(B) Letter of January 19, 1989, from the Kentucky Natural Resources and Environmental Protection Cabinet.

(ii) Other material—none.

[FR Doc. 89–9210 Filed 4–19–89; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 52

[FRL–3557–7]

Approval and Promulgation of Air Quality Implementation Plans; State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Missouri Department of Natural Resources has submitted revised regulations to incorporate by reference EPA's Guidelines on Air Quality Models (Revised 1986) (EPA 450/2–78–027R) and Supplement A (1987). EPA is taking final action to approve this revision to establish consistency with EPA's current requirements on air quality models. Also, two typographical errors in the state regulations are being changed.

DATES: This action will be effective June 19, 1989, unless notice is received by May 22, 1989, that someone wishes to submit adverse or critical comments. If the effective date is delayed, timely notice will be published in the **Federal Register.**

ADDRESSES: Copies of the documents relevant to this action are available for public inspection at:

U.S. Environmental Protection Agency, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101

Public Information Reference Unit, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460

Air Pollution Control Program, Missouri Department of Natural Resources, Jefferson State Office Building, P.O. Box 176, Jefferson City, Missouri 65102

FOR FURTHER INFORMATION CONTACT: Carol D. LeValley at (913) 236–2893 (FTS 757–2893).

SUPPLEMENTARY INFORMATION: On October 18, 1988, the Missouri Department of Natural Resources submitted an amendment to state rule 10 CSR 10–6.060 "Permits Required." The amendment incorporates EPA's Guideline on Air Quality Models (Revised 1986) and Supplement A (1987) to satisfy EPA's modeling requirement in 40 CFR 51.166(l) and 52.21(l) and the rulemaking on the addition of Supplement A which became effective February 5, 1988.

A correction is being made to (7)(F) Table 6. This changes the *de minimis* air quality impact of beryllium from .0001 to .001 micrograms per cubic meter on a 24-hour average. This correction makes this regulation consistent with EPA's requirement at 40 CFR 51.166(i)(8)(i)(h). Also (7)(H) Table 8, Levels of Significant Air Quality Impact for Areas not Meeting 20 CSR 10–6.010 should be 10 CSR 10–6.010.

This amendment was adopted by the Missouri Air Conservation Commission after proper notice and public hearing (see 40 CFR 51.102) and became effective on September 29, 1988. If additional information is desired on EPA's Guideline on Air Quality Models (Revised), the reader can refer to 51 FR 32176 published September 9, 1986, and in reference to Supplement A, 53 FR 392, published January 6, 1988.

EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. This action will be effective June 19, 1989 unless, within 30 days of its publication, notice is received that adverse or critical comments will be submitted.

If such notice is received, this action will be withdrawn before the effective date by publishing two subsequent notices. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period. If no such comments are received, the public is advised that this action will be effective June 19, 1989. ACTION: EPA takes final action to approve Missouri's revised rule 10 CSR 10–6.060, "Permits Required", which pertains to air quality models as submitted in a state submittal on October 18, 1988.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit June 19, 1989. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control and Incorporation by reference.

Note: Incorporation by reference of the State Implementation Plan for the state of Missouri was approved by the Director of the Federal Register on July 1, 1982.

Date: April 15, 1989.

Morris Kay,

Regional Administrator.

40 CFR Part 52 is amended as follows:

PART 52—[AMENDED]

Subpart AA—Missouri

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401—7642.

2. Section 52.1320 is amended by adding paragraph (c)(68) to read as follows:

§ 52.1320 Identification of plan.

* * * * *

(c) * * *

(68) Revised regulations applicable to air quality models were submitted by the Missouri Department of Natural Resources on October 18, 1988.

(i) Incorporation by reference

(A) Revision of rule 10 CSR 10-6.060 "Permits Required," effective on September 29, 1988.

[FR Doc. 89-9381 Filed 4-19-89; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 52

[FRL-3558-5]

Approval and Promulgation of Air Quality Implementation Plans; State of Kansas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: On February 25, 1987, EPA published in the **Federal Register** (FR 5559) a proposal to approve amended Kansas regulations K.A.R. 28-19-16, New source permit requirements for designated nonattainment areas, and K.A.R. 28-19-17, New source permit requirements for designated attainment and unclassified areas. Also, on December 28, 1988, EPA published in the **Federal Register** (FR 52433) a proposal to approve K.A.R. 28-19-18 through 28-19-18f, the state's stack heights regulations; K.A.R. 28-19-17(g), the state's definition of "emission limitation and emissions standard"; and the state's negative declaration with respect to stack height analysis. No comments were received during the public comment period for either proposal. Thus, EPA is today taking final action to approve these rule revisions and the negative declaration.

EFFECTIVE DATE: This rule will become effective on May 22, 1989.

ADDRESSES: Documents relevant to this action are available for inspection during normal business hours at the following locations: Environmental Protection Agency, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101; Kansas Department of Health and Environment, Bureau of Air Quality and Radiation Control, Forbes Field, Topeka, Kansas 66620; and Environmental Protection Agency, Public Information Reference Unit, Room 2922, 401 M Street SW., Washington, DC 20460; and Office of the **Federal Register,** 1100 L Street NW., Room 8301, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Wayne A. Kaiser at (913) 236-2893 (FTS 757-2893).

SUPPLEMENTARY INFORMATION: On February 25, 1987 (52 FR 5559), EPA published a proposed rulemaking for revising Kansas regulations pertaining to construction permits for sources to be located in nonattainment areas, and attainment and unclassified areas. K.A.R. 28-19-16, New source permit requirements for designated nonattainment areas, and K.A.R. 28-19-17, New source permit requirements for designated attainment and unclassified areas, were adopted by the state after a public hearing on November 27, 1985, and became effective on May 1, 1986. EPA reviewed the proposed revision, as described in the proposed rulemaking, and has determined that it meets the applicable requirements of the Clean Air Act. No public comments were received on the proposed rulemaking.

On December 28, 1988 (FR 52439), EPA published a proposed rulemaking for revising the Kansas regulations pertaining to stack heights at K.A.R. 28-19-18, the state definition of "emission limitation and emission standard" at K.A.R. 28-19-7(g), and the state's negative declaration (the state's determination that no emission limits applicable to individual sources require revision due to the stack height provisions). The stack height rules were submitted by the state to EPA on March 27, 1986. EPA's review of the submittal is described in the proposed rulemaking, and EPA has determined that it meets the applicable requirements of the Clean Air Act. No public comments were received on the proposed rulemaking.

For additional background information and discussion regarding this rulemaking, see the appropriate **Federal Register** notices mentioned above.

Final Action

EPA is approving revisions to K.A.R. 28-19-7(g), Definitions; K.A.R. 28-19-16, New source permit requirements for designated nonattainment areas; K.A.R. 28-19-17, New source permit requirements for designated attainment and unclassified areas; K.A.R. 28-19-18, Stack heights; and the negative declaration.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the U.S.Court of appeals for the appropriate circuit by July 18, 1988. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

List of Subjects in 40 CFR Part 52

Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, and Sulfur oxides.

Note: Incorporation by reference of the State Implementation Plan for the state of Kansas was approved by the Director of the Federal Register on July 1, 1982.

Morris Kay,

Regional Administrator.

Date: April 5, 1989.

40 CFR Part 52, Subpart R, is amended as follows:

PART 52—[AMENDED]

Subpart R—Kansas

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. Section 52.870 is amended by adding paragraph (c)(24) to read as follows:

§ 52.870 Identification of plan.

* * * * *

(c) * * *

(24) Revised regulations K.A.R. 28–19–7(g), K.A.R. 28–19–16, and K.A.R. 28–19–17 pertaining to new source permit requirements, were submitted by the Secretary of the Kansas Department of Health and Environment on March 27, 1986. Revised regulation K.A.R. 28–19–18 pertaining to stack heights was submitted by the Secretary of the Kansas Department of Health and Environment on January 6, 1988.

(i) Incorporation by reference

(A) Revised regulations, K.A.R. 28–19–16, 28–19–16b, 28–19–16d, 28–19–16g, 28–19–16i, 28–19–16l, 28–19–17, 28–19–17a, and 28–19–17b, which became effective on May 1, 1986.

(B) Revised regulations K.A.R. 28–19–7(g), and K.A.R. 28–19–18 through 28–19–18f. The temporary regulations became effective December 16, 1987, and became permanently effective on May 1, 1988.

(ii) Additional material

(A) KDHE letter of March 27, 1986, to EPA pertaining to new source permit regulations.

(B) KDHE letter of January 6, 1988, and June 9, 1988, to EPA pertaining to stack height regulations.

(C) KDHE letters of December 7, 1987, and December 23, 1987, pertaining to the state's stack heights analysis and negative declarations.

§ 52.884 [Amended]

3. Section 52.884 is amended by removing paragraph (b).

[FR Doc. 89–9507 Filed 4–19–89; 8:45 am]
BILLING CODE 6560–50–M

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40 CFR Part 261

[SW–FRL–3558–7]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Final Exclusion

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA or Agency) today is granting a final exclusion from the lists of hazardous wastes contained in 40 CFR 261.31 and 261.32 for a specific waste generated by Marquette Electronics, Incorporated, Milwaukee, Wisconsin. This action responds to a delisting petition submitted under 40 CFR 260.20, which allows any person to petition the Administrator to modify or revoke any provision of Parts 260 through 268, 124, 270, and 271 of Title 40 of the Code of Federal Regulations, and under 40 CFR 260.22, which specifically provides generators the opportunity to petition the Administrator to exclude a waste on a "generator-specific" basis from the hazardous waste lists.

EFFECTIVE DATE: April 20, 1989.

ADDRESS: The public docket for this final rule is located at the U.S. Environmental Protection Agency, 401 M Street SW. (Room M2427), Washington, DC 20460, and is available for viewing from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding Federal holidays. Call (202) 475–9327 for appointments. The reference number for this docket is "F–89–MQEF–FFFFF". The public may copy material from any regulatory docket at a cost of $0.15 per page.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Hotline, toll free at (800) 424–9346, or at (202) 382–3000. For technical information concerning this notice, contact Terry Grist, Office of Solid Waste (OS–343), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 382–4782.

SUPPLEMENTARY INFORMATION:

I. Background

A. Authority

Under 40 CFR 260.20 and 260.22, facilities may petition the Agency to remove their wastes from hazardous waste control by excluding them from the lists of hazardous wastes contained at 40 CFR 261.31 and 261.32. Petitioners must provide sufficient information to EPA to allow the Agency to determine (1) that the waste to be excluded is not hazardous based upon the criteria for which it was listed, and (2) that no other hazardous constituents are present in the wastes at levels of regulatory concern.

B. History of the Rulemaking

Marquette Electronics, Incorporated, located in Milwaukee, Wisconsin, petitioned the Agency to exclude from hazardous waste control a specific waste that it generates. After evaluating the petition, EPA proposed, on November 8, 1988, to exclude Marquette's waste from the lists of hazardous waste under 40 CFR 261.31 and 261.32 (see 53 FR 45106).

This rulemaking addresses public comments received on the proposal and finalizes the proposed exclusion.

II. Disposition of Delisting Petition

Marquette Electronics, Incorporated, Milwaukee, Wisconsin.

1. Proposed Exclusion

Marquette petitioned the Agency for an exclusion of its wastewater treatment sludge, presently listed as EPA Hazardous Waste No. F006. Marquette petitioned to exclude its waste based on the claim that the constituents of concern are not present in appreciable amounts in the petitioned waste. To support its claim that both the non-listed and listed constituents of concern are not present in the wastewater treatment sludge above levels of concern, Marquette submitted (1) detailed descriptions of its manufacturing and waste treatment processes and wastewater treatment system; (2) a list of raw materials used at the facility; (3) results from total constituents analyses for the EP toxic metals, nickel, and cyanide; (4) results from EP leachate analyses for the EP toxic metals and nickel; (5) results from leachate analyses for cyanide using distilled water; and (6) results from total oil and grease analyses. These analyses were performed on representative samples of Marquette's wastewater treatment sludge.

The Agency evaluated the information and analytical data provided by Marquette in support of its petition and determined that the hazardous constituents found in the petitioned waste would not pose a threat to human health and the environment. Specifically, the Agency used its Vertical and Horizontal Spread (VHS) model and Organic Leachate Model (OLM) to predict the potential mobility of the hazardous constituents found in the petitioned waste. Based on this evaluation, the Agency determined that the constituents in Marquette's waste would not leach and migrate at concentrations above the health-based levels used in delisting decision-making. See 53 FR 45106, November 8, 1988, for a more detailed explanation of why EPA proposed to grant Marquette's petition for its wastewater treatment sludge.

2. Agency Response to Public Comments

The Agency received public comments on the proposed rule from two interested parties. One commenter opposed the Agency's proposed decision to exclude Marquette's wastewater treatment sludge. The second commenter neither supported nor opposed the Agency's proposed decision, but claimed that the Agency "dismisses or at least discounts the idea of excluding" F006 sludges similar to

Marquette's that are generated by the job shop metal finishing industry. The comments made by the two interested parties are discussed below.

Petition-Specific Comments

One commenter opposed the Agency's proposal to grant Marquette's petition for three reasons, two of which are discussed in turn below. The third reason concerns the inconsistencies between the Delisting Program and the Land Disposal Restrictions Program and is discussed in a later section.

The commenter stated that the Agency did not consider other relevant potential mismanagement scenarios during the evaluation of Marquette's petition. The commenter believes that airborne and waterborne dispersal of the waste could occur, along with or in addition to those exposure routes associated with waste disposal (*e.g.*, ground-water contamination).

With regard to possible airborne dispersal, the Agency notes that Marquette's treated waste is 70–80 percent water. Therefore, the Agency believes that due to the high water content of the waste, airborne dispersal of the treated waste is unlikely.

With regard to waterborne dispersal of the waste, exposure could result primarily from surface waters receiving contaminated ground water or runoff, or from the consumption of drinking water (*i.e.*, ground water) contaminated with leachate derived from the treated material. The VHS model analysis described in the proposal shows that leachate from the waste that travels through the ground water will not exceed health-based levels used in delisting decision-making.

The Agency acknowledges that it may be possible for surface water runoff to transport contaminants from the waste to a nearby surface water body. However, the Agency does not believe that analysis of such overland transport of contaminants would compel a different result for this petition. First, as described in the proposed rule, landfill disposal is a reasonable worst-case management scenario for Marquette's filter cake wastes. Contamination of surface water might occur, therefore, through runoff from the petitioned waste. However, EPA believes that the concentrations of any hazardous constituents in that runoff will tend to be lower than the levels in the EP leachate analyses reported in the proposal due to the acidic medium of the EP tests. Furthermore, any transported contaminants would be further diluted in the surface water body.

Secondly, the Agency believes, in general, that the leachate derived from this waste is not likely to directly enter a surface water body without first traveling through the saturated (subsurface) zone, where dilution and attenuation of constituents may occur. The VHS model takes this saturated zone into account as it predicts the ultimate fate and transport of hazardous constituents. As a result, the Agency continues to believe that under reasonable worst-case conditions, the disposal of Marquette's waste will not present a threat to either human health or the environment.

The commenter also believed that the Agency should not have relied upon EP toxicity data for lead which merely indicated leachable lead levels below a detection limit of 0.10 ppm. The commenter's concerns were based primarily on the fact that the health-based level for lead is 0.05 ppm. The Agency believes that Marquette may have been able to achieve a lower detection limit for its leachable lead analyses, if they had been requested to do so. However, the Agency did not request additional quantification of leachable lead levels because even an assumed maximum leachable lead level of 0.10 ppm passes the VHS model evaluation by a wide margin. Thus, the Agency maintains that leachable lead levels in Marquette's waste are not of concern.

The commenter further stated that the total metal content of the wastewater treatment sludge is relevant in estimating the potential hazards of the petitioned waste.

The Agency agrees that the presence of significant total constituent concentrations of the inorganic constituents of concern was one of the reasons for listing F006 wastes as "T" (toxic) wastes. See 40 CFR 261.11(a)(3)(ii) and "Background Document, Resource Conservation and Recovery Act, Subtitle C, Hazardous Waste Management, section 3001, Identification and Listing of Hazardous Waste—Electroplating and Metal Finishing Operations," 1980. The Agency, however, believes that data presented in the Background Document characterize the physical/chemical nature of a wide variety of F006 sludges and that these data are not representative of the physical/chemical nature of the treated wastes produced by Marquette. Specifically, EPA believes it is reasonable to expect that, as the total constituent concentration of an unbound or loosely bound metal present in a waste increases, the potential for the metal to leach from the waste also increases (generally, the higher the total constituent concentration of an unbound or loosely bound metal, the higher the potential EP leachate concentration). Thus, wastes having significant total constituent concentrations of unbound or loosely bound metals are more likely to impact the underlying ground water than wastes having lower total constituent concentrations of unbound or loosely bound metals. In this case, however, the metals in Marquette's waste are tightly bound within the waste's matrix, as evidenced by the EP leachate analyses. Thus, the Agency believes that the elevated levels of the metals present in Marquette's waste should not pose a threat to human health or the environment. The Agency's conclusion that the inorganic constituents of concern (including lead) are bound in the waste matrix and thus are not available for leaching is supported by the results of the EP leachate analyses presented in the proposed notice. See 53 FR 45109, November 8, 1988.

Exclusion of Job Shop Wastes

A second commenter believes that the Agency discourages job shop facilities from pursuing delisting petitions. The commenter further claims that the Agency believes job shops cannot make a showing that petitioned wastes are consistent from month-to-month and year-to-year. The Agency maintains that, under 40 CFR 260.20 and 260.22, any facility may submit a petition to exclude a waste, provided that the facility can demonstrate that the petitioned waste (1) does not meet any of the criteria for which the waste was listed, and (2) does not contain significant levels of any other hazardous constituents. The Agency does not automatically disregard petitions submitted by job shop facilities. However, the Agency believes that constituent concentrations in wastes generated by job shop facilities may be more variable than in wastes generated by captive electroplaters (facilities that plate their own items). The Agency recognizes that the composition of certain types of wastes may vary, yet this variation may be such that constituent levels are still below levels of concern. In these cases, the Agency believes that an exclusion may be merited. Depending on the variability of the waste, however, EPA may require these facilities to continually analyze the excluded waste for a specific list of analytical parameters. Thus, the Agency is not intentionally discouraging job shop facilities from submitting delisting petitions, but is indicating that the information required of job shop facilities may be more detailed than for

those facilities that plate their own products.

Inconsistencies Between the Delisting Program and the Land Disposal Restrictions Program

One commenter stated that there are inconsistencies between delisting levels proposed for Marquette and the Land Disposal Restrictions Program's (LDRP) proposed best demonstrated available technology (BDAT) treatment levels for F006 wastes. See 53 FR 45106, November 8, 1988, and 53 FR 17578, May 17, 1988, respectively. (On August 17, 1988, the Agency promulgated BDAT treatment levels for F006 non-wastewater wastes. See 53 FR 31138.) Specifically, the commenter stated that leachable concentrations of nickel would almost certainly exceed the BDAT treatment standard promulgated for F006 wastes. The commenter indicated (and the Agency recognizes) that the Delisting Program currently relies on results from the standard or Oily Waste EP leachate procedure (SW–846 Methods 1310 and 1330, respectively), whereas, the BDAT treatment standard for leachable nickel is based on TCLP levels. Furthermore, the commenter stated that it makes no sense for EPA to allow a waste that could not be legally disposed of at a Subtitle C site—because it exceeds promulgated BDAT levels—to be managed as a non-hazardous waste.

The Agency agrees with the commenter that there are differences in approach between some of the decision criteria used in individual delisting decisions and those used in the Land Disposal Restriction Program. However, these differences are appropriate given the separate functions of the two programs and their different regulatory coverage. The Delisting Program and the LDRP are fundamentally different in that the Delisting Program's standards are health-based and the LDRP's treatment standards are technology-based. See RCRA section 3001 (42 U.S.C. 6921) and RCRA section 3004 (42 U.S.C. 6924(m)), respectively. The Agency, however, believes that both the health-based and technology-based approaches of the Delisting Program and the LDRP, respectively, are protective of human health and the environment.

3. Final Agency Decision

For the reasons stated in the proposal, the Agency believes that Marquette's wastewater treatment sludge should be excluded from hazardous waste control. The Agency, therefore, is granting a final exclusion to Marquette Electronics, Incorporated, located in Milwaukee, Wisconsin, for its wastewater treatment sludge described in its petition as EPA Hazardous Waste No. F006. The exclusion only applies to the processes covered by the original demonstration. The facility would require a new exclusion if either its manufacturing or treatment processes are significantly altered, such that an adverse change in waste composition occurred. Accordingly, the facility would need to file a new petition for the altered waste. The facility must treat waste generated from changed processes as hazardous until a new exclusion is granted.

Although management of the waste covered by this petition is relieved from Subtitle C jurisdiction, the generator of a delisted waste must either treat, store, or dispose of the waste in an on-site facility, or ensure that the waste is delivered to an off-site storage, treatment, or disposal facility, either of which is permitted, licensed, or registered by a State to manage municipal or industrial solid waste. Alternatively, the delisted waste may be delivered to a facility that beneficially uses or resuses, or legitimately recycles or reclaims the waste, or treats the waste prior to such beneficial use, reuse, recycling, or reclamation.

III. Limited Effect of Final Exclusion

The final exclusion being granted today is being issued under the Federal (RCRA) delisting program. States, however, are allowed to impose their own, non-RCRA regulatory requirements that are more stringent than EPA's, pursuant to section 3009 of RCRA. These more stringent requirements may include a provision which prohibits a Federally-issued exclusion from taking effect in the State. Because a petitioner's waste may be regulated under a dual system (*i.e.*, goth Federal (RCRA) and State (non-RCRA) programs), petitioners are urged to contact their State regulatory authhority to determine the current status of their wastes under the State law.

IV. Effective Date

This rule is effective immediately. The Hazardous and Solid Waste Amendments of 1984 amended section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. That is the case here because this rule reduces, rather than increases, the existing requirements for persons generating hazardous wastes. In light of the unnecessary hardship and expense that would be imposed on this petitioner by an effective date six months after promulgation and the fact that a six-month deadline is not necessary to achieve the purpose of Section 3010, EPA believes that this rule should be effective immediately. These reasons also provide a basis for making this rule effective immediately, upon promulgation, under the Administrative Procedures Act, pursuant to 5 U.S.C. 553(d).

V. Regulatory Impact

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therfore subject to the requirement of a Regulatory Impact Analysis. This rule to grant an exclusion is not major since its effect is to reduce the overall costs and economic impact of EPA's hazardous waste management regulations. This reduction is achieved by excluding waste generated at a specific facility from EPA's lists of hazardous wastes, thereby enabling the facility to treat its waste as non-hazardous. There is no additional economic impact, therefore, due to today's rule.

VI. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601–612, whenever an agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis which describes the impact of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). The Administrator or delegated representative may certify, however, that the rule will not have a significant economic impact on a substantial number of small entities.

This amendment will not have an adverse economic impact on small entities since its effect will be to reduce the overall costs of EPA's hazardous waste regulations and is limited to one facility. Accordingly, I hereby certify that this regulation will not have a significant economic impact on a substantial number of small entities. This regulation, therefore, does not require a regulatory flexibility analysis.

VII. Paperwork Reduction Act

Information collection and recordkeeping requirements associated with this final rule have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511, 44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2050–0053.

List of Subjects in 40 CFR Part 261

Hazardous materials, Waste treatment and disposal, Recycling.

Date: April 10, 1989

Jeffery D. Denit,

Deputy Director, Office of Solid Waste.

For the reasons set out in the preamable, 40 CFR Part 261 is amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for Part 261 continues to read as follows:

Authority: Sections 1006, 2002(a), 3001, and 3002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended [42 U.S.C. 6905, 6912(a), 6921, and 6922].

Appendix IX to Part 261—[Corrected]

2. In Table 1 of Appendix IX, add the following wastestream in alphabetical order:

Appendix IX—Wastes Excluded Under § 260.20 and § 260.22

TABLE 1. WASTES EXCLUDED FROM NON-SPECIFIC SOURCES

Facility	Address	Waste Description
*	* *	* *
Marquette Electronics Incorporated.	Milwaukee, Wisconsin.	Wastewater treatment sludge (EPA Hazardous Waste No. F006) generated from electroplating operations. This exclusion was published on April 20, 1989.

* * * * *

[FR Doc. 89-9509 Filed 4-19-89; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 261

[SW-FRL-3558-8]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Final Exclusion

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA or Agency) today is granting a final exclusion from the lists of hazardous wastes continued in 40 CFR 261.31 and 261.32 for specified wastes generated by North American Philips Consumer Electronics Corporation, Greenville, Tennessee. This action responds to a delisting petition submitted under 40 CFR 260.20, which allows any person to petition the Administrator to modify or revoke any provision of Parts 260 through 268, 124, and 271 of Title 40 of the Code of Federal Regulations, and under 40 CFR § 260.22, which specifically provides generators the opportunity to petition the Administrator to exclude a waste on a "generator-specific" basis from the hazardous waste lists.

EFFECTIVE DATE: April 20, 1989.

ADDRESS: The public docket for this final rule is located at the U.S. Environmental Protection Agency, 401 M Street SW., Room M2427, Washington, DC 20460, and is available for viewing from 9:00 am to 4:00 p.m., Monday through Friday, excluidng Federal holidays. Call (202) 475-9327 for appointments. The reference number for this docket is "F-88-NAEF-FFFFF." The public may copy material from any regulatory docket at a cost of $0.15 per page.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Hotline, toll free at (800) 424-9346, or at (202) 832-3000. For technical information concerning this notice, contact Linda Cessar, Office of Solid Waste (OS-343), U.S. Environmental Potection Agency, 401 M Street SW., Washington, DC 20460, (202) 475-9828.

SUPPLEMENTARY INFORMATION:

I. Background

A. Authority

Under 40 CFR 260.20 and 260.22, facilities may petition the Agency to remove their wastes from hazardous waste control by excluding them from the lists of hazardous wastes contained at 40 CFR 261.31 and 261.32. Petitions must provide sufficient information to EPA to allow the Agency to determine that (1) the waste to be exlcuded is not hazardous based upon the criteria for which it was listed, and (2) that no other hazardous constituents are present in the wastes at levels of regulatory concern.

B. History of this Rulemaking

North American Philips Consumer Electronics Corporation (NAPCEC), located in Greenville, Tennessee, petitioned the Agency to exclude from hazardous waste control a specific waste it generates. After evaluating the petition on July 12, 1988, EPA proposed to exclude NAPCEC's waste from the lists of hazardous waste under 40 CFR 261.31 and 261.32 (see 53 FR 26283).

This rulemaking addresses public comments received on the proposal and finalizes the proposed exclusion.

II. Disposition of Petition

North American Philips Consumer Electronics Corporation, Greenville, Tennessee

1. Proposed Exclusion

NAPCEC petitioned the Agency for an exclusion of its wastewater treatment sludge filter cake, presently listed as EPA Hazardous Waste No. F006. NAPCEC based its petition on the claim that the constituents of concern, although present in the waste, were in an essentially immobile form. Furthermore, to support its claim that both the non-listed and listed constituents of concern would not be present in the waste above health-based levels of concern, NAPCEC submitted results from total constituent analyses for all the EP toxic metals, nickel, cyanide, and sulfide and results from EP toxicity analyses for all the EP toxic metals and nickel.

The Agency evaluated the information and analytical data provided by NAPCEC in support of its petition and determined that the hazardous constituents found in the petitioned waste would not pose a threat to human health and the environment. Specifically, the Agency used its vertical and horizontal spread (VHS) model and organic leachate model (OLM) to predict the potential mobility of the hazardous constituents found in the petitioned waste. Based on this evaluation, the Agency detrmined that the constituents in NAPCEC's waste would not leach and migrate at concentrations above the health-based levels used in delisting decision-making. See 53 FR 26283, July 12, 1988, for a more detailed explanation of why EPA proposed to grant NAPCEC's petition for its sludge filter cake.

2. Agency Response to Public Comments

The Agency received one public comment on the proposed rule. The commenter supported the Agency's proposed use of the organic leachate model (OLM) and the vertical and horizontal spread (VHS) model as applied to NAPCEC's petitioned waste. The commenter also strongly supported EPA's assertion that "it is inappropriate for the Delisting Program to consider extensive site-specific factors in its evaluation of delisting petitions." See 53 FR 26284. The commenter believed that it is unlawful and inappropriate for EPA to consider any site-specific factors in its evaluation of delisting petitions. This comment does not pertain to this petition or affect the proposed decision since the Agency did not consider any

site-specific factors in its evaluation of the petitioned waste. The Agency, therefore, will independently respond to this comment in terms of a separate rulemaking petition raising this issue with the Agency (filed by the commenter, the Hazardous Waste Treatment Council).

3. Final Agency Decision

For the reasons stated in the proposal, the Agency believes that NAPCEC's wastewater treatment sludge filter cake should be excluded from hazardous waste control. The Agency, therefore, is granting a final exclusion to North American Philips Consumer Electronics Corporation, located in Greenville, Tennessee, for its wastewater treatment sludge filter cake, described in its petition as EPA Hazardous Waste No. F006. The exclusion only applies to the processes covered by the original demonstration. The facility would require a new exclusion if either its manufacturing or treatment processes are altered, and accordingly would need to file a new petition. The facility must treat waste generated from changed processes as hazardous until a new exclusion is granted.

Although management of the waste covered by this petition is relieved from Subtitle C jurisdiction, the generator of a delisted waste must either treat, store, or dispose of the waste in an on-site facility, or ensure that the waste is delivered to an off-site storage, treatment, or disposal facility, either of which is permitted, licensed, or registered by a State to manage municipal or industrial solid waste. Alternatively, the delisted waste may be delivered to a facility that beneficially uses or reuses, or legitimately recycles or reclaims the waste, or treats the waste prior to such beneficial use, reuse, recycling, or reclamation.

III. Limited Effect of Federal Exclusion

The final exclusion being granted today is being issued under the Federal RCRA delisting program. States, however, are allowed to impose their own, non-RCRA regulatory requirements that are more stringent than EPA's, pursuant to section 3009 of RCRA. These more stringent requirements may include a provision which prohibits a Federally-issued exclusion from taking effect in the State. Since a petitioner's waste may be regulated under a dual system (*i.e.*, both Federal (RCRA) and State (non-RCRA) programs), petitioners are urged to contact their State regulatory authority to determine the current status of their wastes under State law.

IV. Effective Date

This rule is effective immediately. The Hazardous and Solid Waste Amendments of 1984 amended section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. That is the case here because this rule reduces, rather than increases, the existing requirements for persons generating hazardous wastes. In light of the unnecessary hardship and expense that would be imposed on this petitioner by an effective date six months after promulgation and the fact that a six-month deadline is not necessary to achieve the purpose of section 3010, EPA believes that this rule should be effective immediately upon promulgation. These reasons also provide a basis for making this rule effective immediately, upon promulgation, under the Administrative Procedures Act, pursuant to 5 U.S.C. 553(d).

V. Regulatory Impact

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This rule to grant an exclusion is not major since its effect is to reduce the overall costs and economic impact of EPA's hazardous waste management regulations. This reduction is achieved by excluding waste generated at a specific facility from EPA's lists of hazardous wastes, thereby enabling the facility to treat its waste as non-hazardous. There is no additional economic impact, therefore, due to today's rule.

VI. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601–612, whenever an agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis which describes the impact of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). The Administrator or delegated representative may certify, however, that the rule will not have a significant economic impact on a substantial number of small entities.

This amendment will not have an adverse economic impact on small entities since its effect will be to reduce the overall costs of EPA's hazardous waste regulations and is limited to one facility. Accordingly, I hereby certify that this regulation will not have a significant economic impact on a substantial number of small entities. This regulation, therefore, does not require a regulatory flexibility analysis.

VII. Paperwork Reduction Act

Information collection and recordkeeping requirements associated with this final rule have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511, U.S.C. Chapter 35) and have been assigned OMB Control Number 2050–0053.

List of Subjects in 40 CFR Part 261

Hazardous materials, Waste treatment and disposal, Recycling.

Date: April 10, 1989

Jeffery D. Denit,

Deputy Director, Office of Solid Waste.

For the reasons set out in the preamble, 40 CFR Part 261 is amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for Part 261 continues to read as follows:

Authority: Secs. 1006, 2002(a), 3001, and 3002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended [42 U.S.C. 6905, 6912(a), 6921, and 6922.]

2. In Appendix IX, add the following wastestream in alphabetical order:

Appendix IX—Wastes Excluded Under §§ 260.20 and 260.22.

Table 1. Wastes Excluded From Non-Specific Sources

Facility	Address	Waste Description
* * * * *		
North American Philips Consumer Electronics Corporation.	Greenville, Tennessee.	Wastewater treatment sludges (EPA Hazardous Waste No. F006) generated from electroplating operations. This exclusion was published on [insert date of publication in the **Federal Register**].
* * * * *		

[FR Doc. 89–9508 Filed 4–19–89; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 271

[FRL 3560-1]

North Carolina; Order To Recommence Proceedings To Determine Whether To Withdraw Hazardous Waste Program Approval

AGENCY: Environmental Protection Agency.

ACTION: Notice of intent to hold a hearing to determine whether to withdraw hazardous waste program approval.

SUMMARY: On November 17, 1987 EPA issued an Order to Commence Proceedings to Determine whether to withdraw Hazardous Waste Approval of North Carolina's Hazardous Waste Management program for reasons set forth in 52 FR 43903. This notice schedules a hearing date for the resumption of the withdrawal proceedings against North Carolina. The hearing was previously postponed (53 FR 32899, August 29, 1988), "pending a review of consistency and capacity issues under the Resources Conservation and Recovery Act (RCRA) and the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)". EPA has completed its review of these National issues.

DATE: The hearing will be held May 31, June 1 and June 2 from 8:30 a.m. to 5:00 p.m.

ADDRESS: The location of the hearing is the Jane S. McKimmon Center, corner of Western Blvd. and Gormand St., Raleigh, NC.

CONTACT: For further information contact: Otis Johnson, Jr., Chief, WPS, RCRA Branch, Region IV, 345 Courtland Street, NE., Atlanta, Georgia 30365, telephone: (404) 347-3016.

Dated: April 18, 1989.

Greer C. Tidwell,

Regional Administrator.

[FR Doc. 89-9618 Filed 4-19-89; 8:45 am]

BILLING CODE 6560-50-M

GENERAL SERVICES ADMINISTRATION

41 CFR Part 101-41

[FPMR Amdt. G-90]

Use of Electronic Data Interchange to Document and Pay Transportation Bills

AGENCY: Federal Supply Service, GSA.

ACTION: Final rule.

SUMMARY: This regulation amends the Federal Property Management Regulations to permit Federal agencies to electronically transmit carrier billings and backup documentation for freight and passenger transportation services as an alternative to issuing the hard copy Standard forms (SF's) prescribed in Part 101-41. This regulation is intended to reduce paperwork and encourage implementation of electronic data interchange Governmentwide.

EFFECTIVE DATE: April 20, 1989.

FOR FURTHER INFORMATION CONTACT: John W. Sandfort, Collections, Accounts, and Procedures Division, Office of Transportation Audits, Office of the Controller, (202) 786-3065 or FTS 786-3065.

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking (NPRM) was published on September 23, 1988, (53 FR 37008), inviting comments within 30 days ending 4:00 p.m., October 24, 1988.

The General Services Administration (GSA) has determined that this rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs to consumers or others; or significant adverse effects. Therefore, a regulatory impact analysis has not been prepared. GSA has based all administrative decisions underlying this rule on adequate information concerning the need for, and consequences of, this rule; has determined that the potential benefits to society from this rule outweight the potential costs and has maximized the net benefits; and has chosen the alternative approach involving the least net cost to society. Paperwork Reduction Act of 1980. This rule contains reporting requirements which have been approved under OMB clearance number 3090-0242.

This final rulemaking anticipates that data collected from carriers for freight transportation service will follow the EDI standards currently utilized by industry in freight transportation transactions; such as, the Transportation Data Coordinating Committee's (TDCC) Transaction Sets (104 and 110 (air), 204 and 210 (motor), 304 and 310 (ocean), 404 and 410 (rail)), and American National Standard Institute (ANSI) Transaction Sets, hereafter referred to as TDCC/ANSI Transaction Sets.

It has not been possible to prescribed EDI standards for passenger transportation services since no EDI applications are presently know to exist. However, this rule anticipates that industry and Government agencies may develop applications and standards at a future date. Regulatory Flexibility Analysis.

Since use of EDI will be optional at the discretion of each carrier, this proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq. A regulatory flexibility analysis has therefore not been prepared. Comments from small business and other interested parties were solicited in our NPRM, but none were received.

Discussion of Major Comments, Suggestions, Determination And Actions Taken

All comments received were considered in the final determination. Comments from seven parties were filed: two carrier associations, two motor carriers, two railroads, and one Government agency.

The following summarizes major comments and suggestions, and GSA's determinations and actions taken.

EDI Benefits

All seven respondents supported GSA's proposal to use EDI as an alternative to the Government's hard copy billing and documentation forms currently prescribed by Part 101-41. Six respondents expressed confidence that EDI transactions would reduce billing and payment costs or otherwise prove more efficient than the paper exchange of information. Three carriers and two associations stated that EDI has been used successfully by many railroads and motor carriers to electronically exchange commercial documents (including freight bills and bills of lading) with private sector customers. No information was provided to support these assertions or to document the extent to which EDI experiences in the private sector are applicable to the Government.

One carrier association expressed the opinion that EDI would assist the Government in avoiding interest penalties required by the Prompt Payment Act (31 U.S.C. 3901, et seq.), presumably by speeding payment of transportation bills, and would improve cash flow to carriers thereby providing an additional incentive for carriers to support implementation of an EDI program within the Government. Regarding this asserting, it should be noted that the Government's ability to promptly pay transportation bills is governed by the timely completion of a prepayment audit (see notice of final

rulemaking published on July 5, 1988, (53 FR 25162)), and/or prompt certification as to the correctness of carrier billings rather than by the mechanics of disbursing funds to carriers.

Need for EDI Standards

Two carrier associations, two carriers, and a Government agency affirmed the need for EDI standards in the rulemaking. One association commended the proposed rule for requiring that there be an EDI letter agreement between parties, but expressed concern that the minimum data requirements in the rule were "somewhat vague."

Two carriers and the other association requested that the EDI rule be modified to allow for rail applications and asked that Transportation Data Coordinating Committee (TDCC) Rail Transactions Sets 404 and 410 be specified. The availability of generic (rail, motor, water) transaction sets (ANSI 858 [bill of lading] and ANSI 810 [freight bill]) was also noted by two carriers.

The Government agency asked that EDI standards be expanded to include those of the American National Standards Institute (ANSI), specifically the ANSI 810 Transaction Set. The agency also felt that EDI coordinating procedures and standards in the proposed rule were vague and proposed two revisions. One suggested revision was to limit GSA review of EDI procedures and standards only to that data transmitted to GSA's Office of Transportation Audits. The second suggestion was for a wording change which the agency felt would more clearly define the minimum data required by GSA.

We have adopted the recommendations that this rule-making establish specific EDI standards and that those standards include rail applications. It has never been GSA's intent to confine EDI exchange of transportation data to a single carrier mode. Similarly, GSA recognizes the potential EDI applications of ANSI as well as TDCC Transaction Sets. Accordingly, EDI standards referred to in the supplementary information portion of the NPRM as "TDCC 210 Transaction Set" are changed in the final rulemaking to read: "EDI standards for freight transportation services include but are not limited to Transportation Data Coordinating Committee Transaction Sets (104 and 110 (air), 204 and 210 (motor), 304 and 310 (ocean), 404 and 410 (rail)) and ANSI Transaction Sets" and have been included in § 101–41.104. However, the suggestion that GSA's review of EDI procedures and standards be limited only to that data transmitted to GSA is not consistent with GSA's oversight responsibilities (§ 101–41.102) and the proposed wording change has not been adopted. In response to the concerns that minimum data requirements in the NPRM are too vague, § 101–41.104 has been changed in the final rulemaking to reiterate GSA data requirements as follows: "(b) The data required for transmission is that data which GSA must have to carry out its responsibilities including data specified in Part 101–41."

Finally, to avoid Federal Acquisition Regulation contract requirements implicit in the bilateral letter of agreement specified in § 101–41.007 of the proposed rulemaking, the term "letter of agreement" has been replaced by the terms "sec. 10721 quotations" and "unilateral ordering agreements" in the final rule.

List of Subjects in 41 CFR Part 101–41

Accounting, Air carriers, Claims, Maritime carriers, Passenger services, Railroads, Transportation.

Title 41 Part 101–41 of the Code of Federal Regulations is amended as follows:

PART 101–41—TRANSPORTATION DOCUMENTATION AND AUDIT

1. The authority citation for Part 101–41 continues to read as follows:

Authority: 31 U.S.C. 3726 and 40 U.S.C. 486(c).

2. Section 101–41.002 is amended by adding paragraphs (c) and (d) to read as follows:

§ 101–41.002 Definitions.

* * * * *

(c) "Electronic data interchange" (EDI) means the electronic exchange of transportation information by means of electronic transmission of the information in lieu of the creation of a paper document.

(d) "Signature," in the case of an EDI transmission, means a discreet authenticating code intended to bind parties to the terms and conditions of a contract.

3. Section 101–41.006 is added to read as follows:

§ 101–41.006 Electronic data interchange (EDI) records.

(a) For the purposes of EDI only, a paper or microform record need not be created to satisfy the requirements of this part if the record is initially prepared in a coordinated electronic exchange medium. Each record kept in such a coordinated medium shall be accompanied by a statement clearly indicating the type of data included in the record and certifying that the information contained in it has been accurately duplicated. This statement shall be executed by the person duplicating the records. The records shall be indexed and retained in such a manner that they are easily accessible and the carrier or the agency shall have the facilities available to locate, identify, and reproduce the records in readable form without loss of clarity.

(b) The transmission of records between the agency, the carrier, and the General Services Administration may be in an electronic media.

4. Section 101–41.007 is added to read as follows:

§ 101–41.007 EDI policy.

When mutually agreeable to the procuring agency and the participating carrier, authorization is granted to use EDI for the procurement of transportation services, provided that there are sufficient procedures to safeguard the integrity of the billing and payment process. An authenticating signature will be used in each transaction as the equivalent of a signature to certify receipt, delivery of goods, and that the bill accurately reflects the services provided and that the carrier charged the lowest charges available for the service. Each carrier must also provide a sec. 10721 quotation or present a unilateral ordering agreement to GSA or other agency of the Government that is establishing an EDI program, binding the carrier to all the requirements of Part 101–41 with the exception of the forms being used. EDI standards are prescribed in § 101–41.104.

Subpart 101–41.1—General

5. Section 101–41.104 is added to read as follows:

§ 101–41.104 Procedures and standards for utilizing EDI.

(a) The medium, timing, and precise format of transmissions of data must be approved in advance by GSA's Office of Transportation Audits (FW), Washington, DC 20405. The Office of Transportation Audits will exercise oversight of individual agency EDI programs through periodic management reviews. Authority to utilize EDI as an alternative to hard copy Standard forms will be suspended by the Director, Office of Transportation Audits, if individual EDI programs fail to meet the transportation documentation and accounting needs of the Government. EDI standards for freight transportation

services include but are not limited to Transportation Data Coordinating Committee Transaction Sets (104 and 110 (air), 204 and 210 (motor), 304 and 310 (ocean), 404 and 410 (rail)), and/or ANSI Transaction Sets.

(b) The data required for transmission is that data which GSA must have to carry out its responsibilities including data specified in Part 101–41.

Dated: March 27, 1989.

Richard G. Austin,

Acting Administrator of General Services.

[FR Doc. 89–9324 Filed 4–19–89; 8:45 am]

BILLING CODE 6820–24–M

41 CFR Part 101–41

[FPMR Temp. Reg. G–53]

Submission of Paid Freight Bills/Invoices, Commercial Bills of Lading, Government Transportation Requests, Passenger Coupons, and Supporting Documentation Covering Transportation Services Under Cost-Reimbursement Contracts

AGENCY: Federal Supply Service, GSA.

ACTION: Temporary regulation.

SUMMARY: This regulation revises § 101–41.807–4 of the Federal Property Management Regulations to include the submission of U.S. Government Transportation Requests and passenger coupons to the General Services Administration (GSA) for audit. Currently, agencies must ensure only that contractors doing business with the United States Government under a cost-reimbursement contract submit paid freight bills/invoices, commerical bills of lading, and supporting documentation to GSA for audit.

DATES: *Effective date:* April 20, 1989.

Expiration date: October 20, 1989.

Comments due on or before: May 22, 1989.

FOR FURTHER INFORMATION CONTACT: John W. Sandfort, Collections, Accounts, and Procedures Division, Office of Transportation Audits (commercial 202–786–3065) or (FTS 786–3065).

SUPPLEMENTARY INFORMATION: The General Services Administration (GSA) has determined that this rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs to consumers or others; or significant adverse effects. Therefore, a regulatory impact analysis has not been prepared. The GSA has based all administrative decisions underlying this rule on adequate information concerning the need for, and consequences of, this rule; has determined that potential benefits to society from this rule outweigh the potential costs and has maximized the net benefits; and has chosen the alternative approach involving the least net cost to society.

Pursuant to the provisions of section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)), GSA has also determined that this rule will not have a significant economic impact on a substantial number of small entities. Therefore, no regulatory flexibility analysis has been prepared.

The reporting forms required by this regulation are not subject to the provisions of Pub. L. 96–511, the Paperwork Reduction Act of 1980, and FIRMR 201–45.6.

List of Subjects in 41 CFR Part 101–41

Accounting, Air carriers, Claims, Freight, Freight forwarders, Maritime carriers, Passenger services, Railroads, Transportation.

Authority: 31 U.S.C. 3726 and 40 U.S.C. 486(c).

In 41 CFR Chapter 101, the following temporary regulation is added to the appendix at the end of Subchapter G to read as follows:

March 23, 1989.

Federal Property Management Regulations, Temporary Regulation G–53

To: Heads of Federal agencies

Subject: Submission of paid freight bills/invoices, commercial bills of lading, Government Transportation Requests, passenger coupons, and supporting documentation covering transportation services under cost-reimbursement contracts

1. *Purpose.* This regulation revises § 101–41.807–4 to require the submission to GSA of Government Transportation Requests and passenger coupons for transportation services provided by contractors doing business with the U.S. Government under a cost-reimbursement contract.

2. *Effective date.* This regulation is effective upon publication in the **Federal Register.**

3. *Expiration date.* This regulation expires on (Insert date not to exceed 1 year after effective date).

4. *Applicability.* This regulation applies to all Government agencies that are subject to the audit atuhority of the General Services Administration (GSA) under 31 U.S.C. 3726.

5. *Background.* FPMR Amendment G–85, published May 12, 1988 (53 FR 16876), requires agencies to ensure that contractors doing business with the Government under a cost-reimbursement contract submit paid freight bills/invoices, commercial bills of lading, and supporting documentation to GSA for audit.

6. *Agency comments.* Comments concerning this regulation should be submitted to the General Services Administration (FWCP), Washington, DC 20405, no later than (Insert date 1 month after date of issue).

7. *Revised policy.* Section 101–41.807–4 is revised to read as follows:

§ 101–41.807–4 Submission of paid freight bills/invoices, commercial bills of lading, Government Transportation Requests, passenger coupons, and supporting documentation covering transportation services by contractors under a cost-reimbursement contract.

(a) Agencies shall ensure that legible copies of paid freight bills/invoices, commercial bills of lading (CBL's), Government Transportation Requests (GTR's), passenger coupons, and supporting documentation for transportation services, for the account of and on which the United States will assume freight and passenger charges that were paid by a Federal agency's contractor under a cost-reimbursement contract and their first-tier subcontractors, under a cost-reimbursement contract, are submitted to GSA for audit.

(b) Agencies shall ensure that each prime contractor forwards legible copies of paid freight bills/invoices, CBL's, GTR's, passenger coupons, and supporting documentation as soon as possible following the end of the month, in one package to the General Services Administration (FWAAC), 18th and F Streets NW., Washington, DC 20405. The shipment shall include the required documents for all first-tier subcontractors under a cost-reimbursement subcontract. If, however, the inclusion of the transportation documents for any such subcontractors in the shipment is not practicable, such documents are to be transmitted in a separate package.

(c) Agencies shall ensure that any original transportation bills or other documents requested by GSA be forwarded promptly by the contractor to GSA. The agency shall ensure that the contractor stamp or write the name of the contracting agency on the face of the bill before sending it to GSA.

(d) A statement prepared in duplicate by the sender shall accompany each shipment of transportation documents. The copy, duly signed and acknowledging receipt of the shipment,

will be returned by GSA. The statement should show the following:

(1) The name and address of the prime contractor;

(2) The contract symbol and number;

(3) The name and address of the field office or headquarters office administering the contract;

(4) The total number of bills submitted; and

(5) A listing of the respective amounts paid, or in lieu of such listing, an adding machine tape of the amounts paid showing the contractor's voucher or check numbers.

Richard G. Austin,

Acting Administrator of General Services.

[FR Doc. 89-9418 Filed 4-19-89; 8:45 am]

BILLING CODE 6820-24-M

41 CFR Part 101-41

[FPMR Amdt. G-88]

Transportation Documentation and Audit; Revision of Standard Form 1170, Redemption of Unused Tickets

AGENCY: Federal Supply Service, GSA.

ACTION: Final rule.

SUMMARY: The General Services Administration (GSA) amends the Federal Property Management Regulations, Part 101-41 by making Standard Form (SF) 1170, Redemption of Unused Tickets suitable for automated preparation. Currently, the SF 1170 is 3¼ by 7⅜ inches and consists of an original and three copies assembled in snapout carbon-interleaved sets. The original and the last copy are of buff-punched-card stock and the remaining copies are of white paper stock. Although the present card stock form is durable and easy to file, it is difficult to prepare using electronic data processing (EDP) printers. The revised SF 1170 will be available in a marginally punched construction (three to the page), and also can be computer-generated on 8½- by 11-inch, marginally punched paper.

EFFECTIVE DATE: April 20, 1989.

FOR FURTHER INFORMATION CONTACT: John W. Sandfort, Chief, Regulations, Procedures, and Review Branch, Office of Transportation Audits (Commercial 202-786-3065 or FTS 786-3065).

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking (NPRM) was published in the **Federal Register** of June 1, 1988 (53 FR 19946). The GSA has received no comments to the NPRM.

The GSA has determined that this rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs to consumers or others; or significant adverse effects. The GSA has based all administrative decisions underlying this rule on adequate information concerning the need for, and consequences of, this rule; has determined that the potential benefits to society from this rule outweigh the potential costs and has maximized the net benefits; and has chosen the alternative approach involving the least net cost to society.

Pursuant to the provisions of section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)), the GSA has also determined that this final rule will not have a significant economic impact on a substantial number of small entities. Therefore, no regulatory flexibility analysis has been prepared.

The reporting forms required by this regulation are not subject to the provisions of Pub. L. 96-511, the Paperwork Reduction Act of 1980, and FIRMR 201-45.6.

List of Subjects in 41 CFR Part 101-41

Accounting, Air carriers, Claims, Passenger service, Transportation.

Title 41, Part 101-41 of the Code of Federal Regulations is amended as follows:

PART 101-41—TRANSPORTATION DOCUMENTATION AND AUDIT

1. The authority citation for Part 101-41 continues to read as follows:

Authority: 31 U.S.C. 3726 and 40 U.S.C. 486(c).

Subpart 101-41.2—Passenger Transportation Services Furnished for the Account of the United States

2. Section 101-41.202 is amended by adding paragraph (h) to read as follows:

§ 101-41.202 Standard forms relating to passenger transportation.

* * * * *

(h) SF 1170-EDP (Electronic Data Processing), Redemption of Unused Tickets (computer-generated).

3. Section 101-41.202-2 is revised to read as follows:

§ 101-41.202-2 SF 1170, Redemption of Unused Tickets.

(a) SF 1170 and SF 1170-EDP (computer-generated) consist of an original and three copies which are carbon-interleaved for simultaneous preparation.

(b) The SF 1170 is pre-printed (three to the page) on 8⅜- by 9¾-inch, four part carbon-interleaved, marginally punched paper. There are perforations between each form.

(c) SF 1170-EDP (computer-generated) must be printed on standard 8½- by 11-inch, four part carbon-interleaved, marginally punched paper. SF 1170-EDP must be positioned so that the name and address of the carrier begin at line 13, column 9, and must be no longer than 31 characters and 5 lines. The name and address of the agency to which the refund is to be made must begin at line 13, column 48, and must be no longer than 31 characters and 5 lines. Fold marks must be located at line 22 and line 45. The SF 1170-EDP must conform to the exact wording as the approved Standard form and must contain the form number and edition date.

4. Section 101-41.202-5 is amended by revising paragraph (a) as follows:

§ 101-41.202-5 Procurement of standard forms by agencies and carriers.

(a) Agencies may obtain supplies of SF 1169 and SF 1170 assemblies from GSA by submitting a requisition in FEDSTRIP format to GSA's Federal Supply Service, Furniture Commodity Center (FCNI), Washington, DC 20406. With respect to the GTR assemblies, FCNI maintains a record of the serial numbers imprinted on the forms and the names and mailing addresses of the receiving agencies. Where feasible, agencies should request that the name and address of the office to be billed for payment of charges be preprinted on each SF 1169 and that the name and address of the office to receive the refund be preprinted on each SF 1170. No other overprinting on SF 1169, SF 1170, or SF 1170-EDP (computer-generated) is permitted unless specifically approved in writing by the Director, Office of Transportation Audits (FW), GSA.

* * * * *

Subpart 101-41.49—Illustrations of Forms

5. Section 101-41.4901-1170-1 is added to read as follows:

§ 101-41.4901-1170-1 Standard Form 1170-EDP (Electronic Data Processing), Redemption of Unused Tickets (computer-generated).

Dated: March 16, 1989.

Richard G. Austin,

Acting Administrator of General Services.

[FR Doc. 89-9325 Filed 4-19-89; 8:45 am]

BILLING CODE 6820-24-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Family Support Administration

45 CFR Part 235

RIN 0970-AA56

Aid to Families With Dependent Children

AGENCY: Family Support Administration (FSA), HHS.

ACTION: Interim final rule.

SUMMARY: This interim final rule implements section 605 of the Family Support Act of 1988, Pub. L. 100-485, which requires State agencies to establish pre-eligibility fraud detection measures.

DATES: *Effective date:* October 1, 1989. *Comment date:* Comments must be received by June 19, 1989.

ADDRESSES: Comments should be submitted in writing to the Acting Assistant Secretary for Family Support, Attention: Ms. Diann Dawson, Director, Division of Policy, Office of Family Assistance, Fifth Floor, 370 L'Enfant Promenade, SW., Washington, DC 20447. Comments may be inspected between 8:00 a.m. and 4:30 p.m. during regular business days by making arrangements with the contact person identified below.

FOR FURTHER INFORMATION CONTACT: Ms. Diann Dawson, Office of Family Assistance, Fifth Floor, 370 L'Enfant Promenade, SW., Washington, DC 20447, telephone (202) 252-5116.

SUPPLEMENTARY INFORMATION:

Discussion of Interim Final Rule

Section 605 of the Family Support Act of 1988 amends section 402(a) of the Social Security Act by adding a new paragraph (45) that requires State agencies to establish measures to detect fraudulent AFDC applications before eligibility is determined.

Federal policy has long recognized that the initial eligibility determination process requires State agency staff to thoroughly question and verify an applicant's statements concerning the family's eligibility for AFDC and the amount of payment (see 38 FR 22007 dated August 15, 1973). An integral facet of this process is the utilization of "verification measures" where the worker confirms the applicant's statements by examining documents in his or her possession or by obtaining information from appropriate third-party sources. We believe that Congress acknowledged the importance of these verification measures and intended for State agencies to take a critical look at current measures and enhance their effectiveness in detecting fraudulent applications as appropriate. Examples of such enhanced verification measures include automated data matches other than those utilized in the Income Eligibility Verification System (IEVS), error prone profiles, mandatory home visits or collateral contacts, and credit bureau inquiries.

In order to implement this statutory provision, we are requiring that the State plan be amended to contain a description of the various verification measures used to detect fraudulent applications for AFDC prior to the establishment of eligibility for such aid. This description should include long established measures routinely performed by workers, periodic support activities such as training on investigative interviewing techniques, and any newly established initiatives designed to be performed by or in support of staff responsible for pre-eligibility fraud detection.

Furthermore, we believe that to ensure the effectiveness of the pre-eligibility verification process, State agencies must routinely monitor, evaluate, and refine their verification measures as appropriate. We are therefore requiring that States perform an annual evaluation of their verification measures and submit needed changes as amendments to their State plans. Additionally, we are requiring that a report of the evaluation be submitted to the FSA Regional Office within 45 days following the end of the Federal fiscal year. This will help us evaluate proposed amendments as well as enable us to share valuable ideas with other States.

The rule requires that costs attributed to such verification measures will qualify for Federal matching as administrative costs at the 50 percent Federal matching rate.

Regulatory Procedures

Justification for Dispensing With Notice of Proposed Rulemaking

There has been a strong desire for the issuance of definitive Federal policies regarding pre-eligibility fraud detection measures. The statute requires final rules to be issued six months after the date of enactment (October 13, 1988). Accordingly, these provisions are published as an interim final rule. It would be impracticable to publish this regulation as a Notice of Proposed Rulemaking in view of the Congressionally mandated publication date. In addition, neither the States nor individuals will be affected deleteriously in any way as the interim final rule is subject to a 60-day comment period and we plan to publish a final rule that responds to comments received.

Executive Order 12291

This interim final rule has been reviewed under Executive Order 12291 and does not meet any of the criteria for a major regulation. Therefore, a regulatory impact analysis is not required because this regulation will not: (1) Have an annual effect on the economy of $100 million or more; (2) impose a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies or geographic regions; or (3) result in significant adverse effects on competition, employment, investment, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Paperwork Reduction Act

Section 235.111(c) of this interim final rule contains information collection requirements which are subject to review by the Office of Management and Budget under section 3504(h) of the Paperwork Reduction Act of 1980 (Pub. L. 96-511). Organizations and individuals desiring to submit comments on this information collection requirement should direct them to the agency official designated for this purpose whose name appears in the preamble, and to the Office of Information and Regulatory Affairs, OMB, New Executive Office Building (Room 3208), Washington, DC 20503, Attention: Desk Officer for DHHS.

Regulatory Flexibility Act

The Regulatory Flexibility Act (Pub. L. 96-354) requires the Federal government to anticipate and reduce the impact of rules and paperwork requirements on small businesses. The primary impact of this interim final rule is on State governments and individuals. Therefore, we certify that this rule will not have a significant economic impact on a substantial number of small entities because it affects benefits to individuals and payments to States. Thus, a regulatory flexibility analysis is not required.

(Catalog of Federal Domestic Assistance Programs 13.780, Assistance Payments-Maintenance Assistance)

List of Subjects in 45 CFR 235

Aid to Families with Dependent Children, Fraud, Grant programs—social programs, Public assistance programs.

Dated: April 6, 1989.

Catherine Bertini,

Acting Assistant Secretary for Family Support.

Approved: April 6, 1989.

Louis W. Sullivan,

Secretary of Health and Human Services.

Part 235 of Chapter II, Title 45 of the Code of Federal Regulations, is amended as set forth below:

PART 235—[AMENDED]

1. The authority citation for Part 235 is revised to read as follows:

Authority: Section 402 of the Social Security Act (42 U.S.C. 602).

2. New § 235.111 is added to read as follows:

§ 235.111 Pre-eligibility fraud detection measures.

(a) *State plan requirement.* A State plan under title IV, Part A of the Social Security Act must contain a description of the verification measures to detect fraudulent applications for AFDC prior to the establishment of eligibility for such aid.

(b) *Definition.* For purposes of this section, "verification measures" are actions taken by a State agency:

(1) To confirm information provided by an applicant to support his or her eligibility for AFDC; and

(2) To confirm information provided by an applicant that is relevant in determining the amount of the assistance payment.

Such actions involve the examination of supporting documentation in the applicant's possession and obtaining additional information, when necessary, from appropriate third party sources; also included are any periodic support activities taken by the State agency to enhance these actions. Examples of such measures include: automated data matches to establish the accuracy of statements on the application; use of error prone profiles; home visits or collateral contacts; credit bureau inquiries; and training on investigative interviewing techniques.

(c) *Annual evaluation.* A State agency shall make a written evaluation each calendar year of the effectiveness of its verification measures, submit a copy of the evaluation to the FSA Regional Office within 45 days following the end of the Federal fiscal year, and submit any appropriate amendments to its title IV–A State plan. The evaluation must include an assessment of verification measures such as home visits, credit bureau inquiries, data matches with entitlement programs in addition to those included in the State's Income and Eligibility Verification System (IEVS), or other similar measures implemented by States.

(d) *Federal financial participation.* Verification measures to detect fraudulent applications will be matched as administrative costs at a 50 percent rate.

[FR Doc. 89-9499 Filed 4-19-89; 8:45 am]

BILLING CODE 4150-04-M

LEGAL SERVICES CORPORATION

45 CFR Part 1611

Eligibility; Income Level for Individuals Eligible for Assistance

AGENCY: Legal Services Corporation.

ACTION: Final rule.

SUMMARY: The Legal Services Corporation is required by law to establish maximum income levels for individuals eligible for legal assistance. This document updates the specified income levels to reflect the annual amendments to the official Federal Poverty Income Guidelines as defined by the Department of Health and Human Services.

EFFECTIVE DATE: April 20, 1989

FOR FURTHER INFORMATION CONTACT: Timothy B. Shea, General Counsel, Legal Services Corporation, 400 Virginia Avenue SW., Washington, DC 20025-2571; (202) 863-1823.

SUPPLEMENTARY INFORMATION: Section 1007(a)(2) of the Legal Services Corporation Act, 42 U.S.C. 2996f(a)(2), requires the Corporation to establish maximum income levels for individuals eligible for legal assistance and the Act provides that income shall be taken into account along with other specified factors.

Section 1611.3(b) of the Corporation's regulations establishes a maximum income level equivalent to one hundred and twenty-five percent (125%) of the official Federal Poverty Income Guidelines as defined by the Office of Management and Budget. Responsibility for revision of the official Federal Poverty Income Guidelines was shifted in 1982 from the Office of Management and Budget to the Department of Health and Human Services. The revised figures for 1989 equivalent to 125% of the current official Poverty Income Guidelines as set out at 54 FR 7098 (Feb. 16, 1989) are set forth below:

List of Subjects in 45 CFR Part 1611

Legal services.

PART 1611—ELIGIBILITY

1. The authority citation for Part 1611 continues to read as follows:

Authority: Secs. 1006(b)(1), 1007(a)(1), 1007(a)(2) Legal Services Corporation Act of 1974, as amended, 42 U.S.C. 2996e(b)(1), 2996f(a)(1), 2996f(a)(2).

2. Appendix A of Part 1611 is revised to read as follows:

APPENDIX A OF PART 1611—LEGAL SERVICES CORPORATION POVERTY GUIDELINES *

Size of family unit	All states but Alaska and Hawaii [1]	Alaska [2]	Hawaii [3]
1	$7,475	$9,350	$8,587
2	10,025	12,537	11,525
3	12,575	15,725	14,462
4	15,125	18,912	17,400
5	17,675	22,100	20,337
6	20,225	25,287	23,275
7	22,775	28,475	26,212
8	25,325	31,662	29,150

* The figures in this table represent 125% of the poverty income level by family size as determined by the Department of Health and Human Services.

[1] For family units with more than eight members, add $2,550 for each additional member in a family.

[2] For family units with more than eight members, add $3,187 for each additional member in a family.

[3] For family units with more than eight members, add $2,937 for each additional member in a family.

Dated: April 17, 1989.

Timothy B. Shea,

General Counsel.

[FR Doc. 89-9541 Filed 4-19-89; 8:45 am]

BILLING CODE 7050-01-M

Proposed Rules

Federal Register
Vol. 54, No. 75
Thursday, April 20, 1989

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Part 318

[Docket No. 88-025P]

RIN 0583-AA49

Additional Methods for Destroying Trichinae

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is proposing to amend the Federal meat inspection regulations (9 CFR 318.10) by amending trichina destruction Method No. 3 for hams and pork shoulders (9 CFR 318.10(c)(3)) to allow more variety in the production of country hams, including the use of ambient temperature drying. The proposed change would also combine two present controlled temperature drying tables. Further, FSIS is proposing to amend trichina destruction Method No. 1 for hams and pork shoulders to allow establishments to use a drying time and temperature combination prescribed in the controlled temperature drying table in proposed Method No. 3. In addition, FSIS is proposing to rescind one of the approved trichina destruction methods (Method No. 2) because establishments no longer use it. FSIS is also proposing a new specific trichina destruction method for hams and pork shoulders (Method No. 4) which would permit establishments to substitute potassium chloride for salt in the curing mixture based on data substantiating that specific process. Finally, FSIS is proposing to ease the drying requirements for oval sausages found in Table 3a, based on the application of basic physical principles and on data submitted by a manufacturer.

DATE: Comments must be received on or before June 19, 1989.

ADDRESS: Written comments to: Policy Office, Attn: Linda Carey, FSIS Hearing Clerk, Room 3171, South Agriculture Building, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Mr. Bill Dennis, Director, Processed Products Inspection Division, Technical Services, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447-3840.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

The Administrator has determined that this proposed rule is not a "major rule" within the scope of E.O. 12291. It would not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Effect on Small Entities

The Administrator, Food Safety and Inspection Service, has determined that the proposed rule will not have a significant economic impact on a substantial number of small entities as defined by the Regulatory Flexibility Act, Pub. L. 96-354 (5 U.S.C. 601 *et seq.*). The Agency has determined that the vast majority of country ham manufacturers are small entities; this determination is based on evaluation of each establishment's process, on-site visits, and that historically, this industry has been composed of small entities. All of the 170 country ham producers would be able to comply with the proposed regulations as amended. Some may have to change their process slightly or make a minimal investment in equipment amounting to several hundred dollars. The Agency has determined that this is not a significant impact on these small producers. The amendment to Method No. 1 and the requirement for oval sausages were requested by one processor each and are permissive only, so they would have a negligible effect on the industry. Based on the Agency's knowledge of these manufacturer's products, the proposed amendment would not produce a significant economic impact.

The proposed Method No. 4, permitting the use of potassium chloride, is an additional processing method. It would not exclude any present or proposed method; it can be used with simple technology; and it could partially answer a few processors complaints that their product is increasingly unpopular because of its sodium content. Therefore, it would have a negligible effect on small entities.

Comments

Interested persons are invited to submit written comments concerning this proposal. Written comments should be sent to the Policy Office and should refer to the docket number that appears in the heading of this document. All comments submitted in response to this action will be available for public inspection in the Policy Office between 9:00 a.m. and 4:00 p.m., Monday through Friday.

Background

On March 10, 1983, FSIS published a proposed rule in the **Federal Register** (48 FR 10065) to permit additional trichina destruction treatment methods providing prescribed times and internal product temperatures for freezing, combinations of smoking temperature and drying temperature for processing hams and pork shoulders, and alternate sausage drying times based on salt content, sausage diameter, and fermentation or smoking temperature and time. The final rule was published on February 7, 1985 (50 FR 5226) and became effective on August 6, 1985. On the effective date of the final regulation, all trichina destruction treatments not listed in the Federal meat inspection regulations as approved methods were rescinded.

Affected establishments that operated small, local businesses that served their own communities objected to the final regulation. they asserted that they were using time-tested methods of trichina destruction and there was not history of illness associated with their product.

FSIS considered those claims to have merit and, therefore, developed the following plan and published it as a partial waiver of the final rule in the **Federal Register** on June 18, 1985 (50 FR 25202). Establishments that make country ham could send a copy of a nonconforming process to FSIS before

August 6, 1985, for review, and continue its use until December 31, 1986, unless the Department determined that it was not likely to prove effective, or data became available to substantiate the effectiveness or ineffectiveness of the method.

The Agency reviewed over 100 different ham curing processes to evaluate their effectiveness in destroying trichinae based on currently available scientific information. Upon reviewing these processes, the Agency determined that all but two establishments were using processes that appeared effective in destroying trichinae. The Agency immediately directed those two establishments to amend their process to comply with the present regulations. The other nonconforming establishments were judged provisionally acceptable based on professional expertise. Subsequent to these determinations, FSIS worked with other USDA scientists to develop a general research protocol which, considering the money available, would give the best and most useful information about the mechanism of killing trichinae by curing.

The Department selected Texas A&M Universtiy to conduct the research because that univeristy had qualified people with experience in conducting experiments with dry-cured hams; it had had prior experience with trichina research and also had the ability to begin the research within a short time period. A summary of the research data and the results are provided elsewhere in this document.

In addition to the country ham question, other questions related to trichina destruction have emerged as a result of the implementation of the final rule. One establishment makes a sausage that is oval rather than round. The traditional degree of required rigor for trichina treatment had been based on the diameter of the round sausage. The question then arose as to how one determines the diameter of the oval sausage. The establishment submitted data to substantiate their point of view. A summary of their research data is provided elsewhere in this document.

Method No. 2 is an approved ham curing method in the Federal meat inspection regulations. Method No. 2 was published simultaneously by the same scientists that validated Method No. 1; [1] both methods are described in the regulations as dry-salt curing processes. Method No. 2 requires the establishment to inject a brine solution into the ham while brine injection is optional for Method No. 1. The Agency believes that there are no establishments presently using Method No. 2 because the standard for Country Ham and Dry Cured Ham [9 CFR 319.106] prohibits brine injection. Other establishments use heat treatment. Therefore, the Agency proposes to rescind Method No. 2 from the Code of Federal Regulations.

North Caorlina State Universtiy scientists have completd and published trichina destruction research for a dry-cured ham process and demonstrated that salt (sodium chloride) may be partially substituted with potassium chloride and still result in a safe product. They published these research results in the Journal of Food Science (1987) 52:(3)554–563 [2]. The research did not show that potassium chloride was equivalent to sodium chloride in killing trichinae; however, it showed that hams were free of infective trichinae within 72 percent of the drying time when made with a certain processing method and up to half of the salt substituted with potassium chloride. Additionally, the ham processing method used for their research had a specific salt application rate and a longer curing time (the salt contact time plus equalization time) than either the proposed Method No. 3 or the present Method No. 3. Therefore, the Agency is proposing to approve substituting potassium chloride for salt in dry-cured hams for that processing method by adding a new Method No. 4 to 9 CFR 318.10(c)(3)(iv).

A prosciutto manufacturer using currently approved Method No. 1 for hams requested permission to use a time/temperature drying process that consisted of keeping the product for 9 days in a temperature of 105 °F as permitted by Method No. 3 in Table 5 rather than the 10 days at 95 °F required by Method No. 1. The 9 days at 105 °F is a far more rigorous time/temperature combination. USDA scientists have considered the matter and determined that Method No. 1 prescribes a more stringent salting requirement than does Method No. 3. Method No. 1 specifies the amount of salt to be used per 100 pounds of product, while Method No. 3 does not. Thus, any drying time and temperature combination in Table 5 in Method No. 3, used in conjunction with Method No. 1 salting requirements, should be effective in protecting the public health. Therefore, the proposal would change Method No. 1 accordingly.

The Texas A&M Research

USDA and Texas A&M scientists designed an experiment to test the destructive effect of three frequently used ham drying temperatures on trichinae [3]. By sampling both deep and shallow ham tissue at different drying times, the scientists hoped to resolve the relative effect of salt concentration during the curing and drying steps as well as the effect of temperature during the drying process on destroying trichinae. If these factors were better understood and quantified, FSIS could better evaluate the effectiveness of individual processes and write a more precise regulation.

The Texas A&M scientists carried out the experiment by selecting and purchasing a number of below-market-weight hogs, feeding infective trichina cysts to these hogs, allowing the hogs to develop trichinosis as they reach market weight, slaughtering the hogs and harvesting the hams, subjecting the hams to various analyses to secure baseline data, and then subjecting the hams to specific curing and drying treatments.

The hams were sampled at various points in the treatment, including the endpoint, and tested for infective trichinae. This was done by treating the ham to extract the cysts and feeding the extract to trichina-susceptible rats. After the trichinae had a chance to develop and encyst in the rats, the rats were killed and their flesh treated with an acid/enzyme mixture so that they could be examined for cysts. If live cysts were found after such a treatment, it meant that the treatment was not effective for the destruction of trichinae.

There were 66 hogs in the study. From the resulting 132 hams, the 44 heaviest were termed large, the next 44 medium, and the 44 lightest were termed small. Of the 132 hams, 120 received the short cure as described below and 12 large hams received the bag cure. Three drying treatments were used, 50 °F, 75 °F, and 90 °F. Ten hams of each size were used for each drying treatment, and in addition one ham of each size was examined before drying as a control. This required a total of 93 hams. In addition, 12 large hams were used to test the bag cure. These 12 hams were subjected to the same period of salt

[1] Ransom, B., Schwartz, B., and Raffensperger, H., *Effects of Pork-Curing Processes on Trichinae*, USDA Bulletin 880 (1920).

[2] Copies of the mentioned study reports are available free of charge from the FSIS Hearing Clerk, Policy Office, USDA, Room 3171 South Agriculture Building, Washington, DC 20250.

[3] Copies of the mentioned study reports are available free of chage from the FSIS Hearing Clerk, Policy Office, USDA, Room 3171, South Agriculture Building, Washington, DC 20250.

equalization as the other 93 hams and were dried using the 75 °F treatment. The remaining 27 hams were also treated, but were kept as spares in case of spoilage and in fact were not analyzed.

The short cure procedure consisted of covering the exposed lean portions of the hams with salt and leaving this salt in contact with the ham for 1.5 days per pound. Salt was applied twice; the application on the first day of curing consisted of about 4 pounds of salt per 100 pounds of ham. Another 2 pounds per 100 pounds of ham was applied 10 days later. After this salt contact period, the hams were rinsed of excess salt and hung for 0.5 days per pound to permit equalization of the high surface salt concentration with low interior salt concentration. The salt contact plus equalization periods totaled at least 2 days per pound of ham but not less than 40 days. The short cure procedure was so named because the processes now in the regulations require the salt contact period alone to be at least 40 days (Method No. 1) or 30 days (Method No. 3). Therefore, the cure being tested allows the establishment to maintain salt contact for a lesser period of time so that the hams are slightly less salty, hence the term short cure.

The bag cure is a traditional farm curing method in which the manufacturer rubs the mixture into the hams, wraps the hams in paper with additional curing mixture and hangs the hams without refrigeration for 6 months or more. In the experiment, the 12 large hams were rubbed with about 4.5 pounds of salt per 100 pounds of ham, wrapped in paper, maintained for the same cure periods as the other large hams, but with no additional salt added, unwrapped, and from that point on treated in the same manner as the other hams.

To study salt effects, the experimental protocol called for sampling five muscle sites within each ham. In dry-cured hams deep muscles such as the biceps femoris absorb salt more slowly than surface ones such as the semimembranosus and, consequently, have less salt during drying and in the finished product. Similarly, the hock region of these muscles absorbs salt more slowly because of their distance from the surface. In order to measure the relative rate of salt absorption and its effect on trichina destruction, the research protocol required assays of center and hock regions of the biceps femoris, the center and the hock regions of the semimembranosus, and the rectus group of muscles.

To study the relative contribution of drying, the protocol provided three drying treatments: 50 °F for 90 days, 75 °F for 35 days, and 90 °F for 11 days, all taken from Table 5 of the trichina treatment regulation (9 CFR 318.10). For each ham size, a representative ham was sampled at the beginning of the drying period; then for each treatment, two hams were sampled ⅓ of the way through the drying period, two ⅔ of the way through the drying period, three ⅚ of the way through the drying period, and three at the completion of the drying period. During the bag cured hams' drying procedure (using the 75 °F) one ham was sampled at the beginning of the drying period, two ⅓ of the way through the drying period, four ⅔ of the way through, and five at the end.

The Texas A&M Research Results

The results from the research that could be directly employed in controlling the processing of country hams were few, but very important.

1. Drying time and temperature were the prime lethal factors in killing trichinae.

2. Brine concentration (a ratio of the salt and water content) was less important in killing trichina, but it was a critical factor.

3. Water activity (an index fraction indicating the amount of unbound water present, pure water has a water activity of 1.0) is currently being used by some foreign countries as a measure of whether a product is trichina safe. Although not disproved by this study, the data does not lend credence to water activity alone as a reliable indication of trichina death or inactivation.

4. The 50 °F drying time of 90 days, in the FSIS regulations as a drying time/temperature combination for years and thought to destroy trichinae, has now been shown to be less effective than originally thought. This has had serious effects upon the trichina rule because the experiment was not designed to determine the effectiveness of times longer than those in the regulations for trichina destruction. Thus, the present data indicates no safe drying time at a temperature below 75 °F.

The Oval Sausage Research

The present rule requires that the drying time for dried sausages be determined by the greatest diameter. Sausages are stuffed into a tubular shape and a cross-section of that tube is a circle. Prior to publication of the final rule, FSIS learned that a few establishments first stuffed the sausages into tubes and then flattened the tubes somewhat. This resulted in a cross-section that was an oval rather than a circle. For safety, FSIS therefore promulgated the greatest diameter rule for determining the drying time for oval sausages.

However, since then one such manufacturer petitioned FSIS that this degree of safety was unnecessary and unfair. The manufacturer stated that flattening a sausage should not slow the drying of a sausage but hasten it. The Agency recognized that this statement is in accord with basic physical principles. Additionally, since past research has shown that trichina destruction is proportional to the drying rate in sausages, flattened sausages, if they dry faster, should be as safe or safer than round sausages. Accordingly, the manufacturer developed an experiment [4] to show that sausage drying rates are more closely related to the circumference than the greatest diameter, since flattening a sausage changes the greatest diameter, but not the circumference.

The manufacturer selected 16 sausages from a regular production lot and weighed and identified them. Eight of them were dried unflattened with an average diameter of 4.29 inches before drying. The other eight were 4.42 inches before drying and were flattened to an average large diameter of 5.2 inches. Table 3A of the trichina regulations, 9 CFR 318.10(c)(3)(i), Method No. 6, presently requires 30 days for the round sausage (4½ inches) and 43 days for the flattened ones (5½ inches).

The manufacturer dried the sausages at 58 °F and a relative humidity of 60 percent then weighed the drying sausages at approximately 8 day intervals. After 32 and 40 days, drying, portions of the sausages were also analyzed for moisture and protein content.

The Oval Sausage Research Results

The results showed that the flattened sausages lost weight faster than the round ones and that their moisture content was less at 32 and 40 days' drying. Flattened sausages lost an average of 23 percent of their weight during 32 days' drying, round sausages lost 21 percent. The moisture contents were similar after 32 days' drying; flattened contained 43.9 percent moisture, round 44.1 percent. These results indicate, as physical principles and logic would predict, that the flattened sausages dry at an equal or faster rate than round sausages of the same circumference.

[4] Copies of the mentioned study reports are available free of charge from the FSIS Hearing Clerk, Policy Office, USDA, Room 3171, South Agriculture Building, Washington, DC 20250.

The Agency believes the results to be sufficiently credible to propose that Table 3A be amended to require that the calculations of the drying time for flattened or oval sausages be based on their circumference. This proposed amendment is based on the premise that the drying rate is directly correlated to the death rate of any trichina cysts that may be in the sausage.

Discussion of the Proposal

The proposal would first alter the way the diameter is determined for flattened sausages so that a drying time can be obtained. The present regulation requires the use of the largest diameter. The proposal would substitute the circumference.

The proposal would add a statement as to the ham weight to be used in calculating days per pound. The purpose of the addition is intended for the sake of clarity and is not substantive. In addition, Method No. 2 would be rescinded and that Method would be reserved. It was developed by Department employees in the 1920's and so far as is known today, is not in use. Therefore, it serves only as a source of confusion. For that reason it would be rescinded.

There are several differences in the proposed Method No. 3 and the present Method No. 3. The proposed regulation is broken into several paragraph instead of one, each paragraph treating a different stage of processing. This is to make the regulation more understandable and to better show the alternative processing choices available to the manufacturer.

A minimum salt content is specified is specified for the curing mixture. This is based on scientific research showing that the amount of salt in the tissue is significant to trichina destruction.[5] Therefore, the salt in the curing mixture must not be too diluted. The minimum amount of salt in the cure mixture, 70 percent, is based both on what those researchers used and what manufacturers commonly use.

There is no requirement for use of a specific amount of salt, except for the bag cure method. It the meat surface is covered with cure then maximum cure absorption is attained without the need for a required weight. Thus, a requirement to rub the cure mixture into all exposed muscle tissue and cover it with additional mixture appears to be more meaningful.

There are changes in the mandatory cure contact and equalization times. The proposed regulation would still require a total curing time (cure contact time plus equalization time) of at least 40 days but no less than 2 days per pound of meat. However, the establishment could shorten the cure contact time to a minimum 28 days but not less than 1.5 days per pound of meat if it increased the equalization time to meet the total curing time requirement. The current Method No. 3 requires a total curing time of 40 days but not less than 2 days per pound of meat and permits establishments to credit only 10 days equalization to the total curing time. Method No. 1 requires a minimum of 40 days cure contact and does not credit equalization time.

The time at which the surface of the product can be rinsed of excess cure mixture would be changed to permit rinsing after completing the cure contact period and before the beginning of equalization. The proposed regulation would also permit brushing, bumping, or other mechanical means of removing excess cure which the current Method No. 3 does not recognize.

Currently, Method No. 3 requires that the establishment overhaul at least once during the curing process. This requirement would be replaced with the simpler requirement to keep the exposed muscle tissue covered with cure mixture because this will supply sufficient salt penetration to ensure an adequate cure to destroy trichinae.

For the first time, a specific provision would be made for the bag cure method. Only a few establishments still use this method. This method is somewhat distinct because it does not conveniently permit an overhaul during curing, since the ham is wrapped in paper. However, since salt is not permitted to fall off these hams and a specific amount of salt is prescribed, the method is fully acceptable.

In recognition of the actual range of practices in the production of country hams, the regulation would provide three different schedules of drying times depending upon whether the establishment elects to (1) dry the product in a temperature controlled room, in which case provision would be made for that on the basis of the controlled chamber temperature; (2) not control the room temperature, but monitor the temperature of the product and alter the drying times accordingly; or (3) ignore the temperature and operate solely by the calendar.

For the establishments who operate on the basis of drying temperature, whether it is controlled or not, the most significant change in the proposed regulation is the removal of all references to temperatures below 75 ° F from the drying time/temperature table. This came about as a result of the Texas A&M research, as discussed above. Other times and temperatures may be added later as a result of further research. However, at the present time some processors may have to adjust their drying temperatures slightly.

Those establishments who operate only by calendar and do not monitor time and temperature live primarily in the Eastern States of North Carolina, Virginia, and Kentucky. As the chart below for mean temperatures indicates, the summer temperatures appear adequate for assuring safe dry cured hams. The coolest climate at which a country ham establishment is now operating is Boone, North Carolina. Should an establishment wish to begin drying by the calendar, then they would have to demonstrate that their local climate is as warm or warmer that that reported for Boone, North Carolina, for 1951 to 1980. This could be accomplished by supplying the Department with weather charts for that locality.

In developing a rule for establishments wishing to use the calendar, the Agency consulted National Oceanic and Atmospheric Administration weather tables for those areas. The following Table presents normal average and minimum monthly temperatures for the period between 1951 to 1980 of two areas in which there are establishments using ambient drying temperature.

MONTHLY TEMPERATURES (° F) for Two Ham Curing Areas

Station	January	February	March	April	May	June	July	August	September
Normal Average Temperatures									
Frankfort, KY	30.9	33.4	42.5	53.5	63.0	71.5	75.6	74.5	68.3

[5] Copies of the mentioned study reports are available free of charge from the FSIS Hearing Clerk, Policy Office, USDA, Room 3171, South Agriculture Building, Washington, DC 20250.

MONTHLY TEMPERATURES (° F) for Two Ham Curing Areas—Continued

Station	January	February	March	April	May	June	July	August	September
Boone, NC	32.2	34.1	41.3	51.2	59.1	65.1	68.3	67.5	61.6
Normal Minimum Temperatures									
Frankfort, KY	20.9	22.9	31.0	40.7	50.3	59.4	63.5	62.2	55.3
Boone, NC	22.8	24.2	30.8	39.6	48.1	54.7	58.5	57.6	51.6

The FSIS has no data concerning the effect of smoke as such on trichina survival. The current "Table 6.—Smoking and Drying Schedule" was intended to convey the effect of drying at two different temperatures, one of which occurred when the product was being smoked. The regulations would be modified in this regard to indicate the effect of heating at two or more different temperatures on trichina survival. It appears the easiest way to do this would be to combine Tables 5 and 6. In addition, since a number of fractional drying periods are being totaled and it is not clear that the cumulative effect is simply additive, a safety margin would be added to assure that the resulting process had sufficient safety.

The last sentence of Method No. 1 for hams and shoulders would be amended to acknowledge that the drying times and temperatures of Method No. 3 are all suitable for Method No. 1 with its more rigorous salting requirement.

Finally, a new Method No. 4 is proposed which would permit establishments to replace salt with potassium chloride on an equal weight basis using a processing method similar to that used by the North Carolina researchers. Proposed Method No. 4 is based on the proposed Method No. 3 but with changes as follows.

Proposed Method No. 4 prescribes a minimum salt content in the cure mixture that is slightly higher than that in the proposed Method No. 3, but permits substituting up to half of the salt with potassium chloride (KC1) on an equal weight basis. It also prescribes the minimum amount of salt and KC1 to be applied, approximately how much to apply at each overhaul, and the number of overhauls. Finally, Method No. 4 prescribes longer cure contact and equalization times than the proposed Method No. 3. These requirements reflect the experimental procedure used by the research scientists.

In consideration of the above, FSIS is proposing to amend Part 318 of the Federal meat inspection regulations (9 CFR 318) regarding treatment methods for destroying trichinae in pork and pork products as follows:

PART 318—[AMENDED]

1. The authority citation for Part 318 would continue to read as follows:

Authority: 34 Stat. 1260, 79 Stat. 903, as amended, 81 Stat. 584, 84 Stat. 91, 21 U.S.C. 71 *et seq.*, 601 *et seq.*, 33 U.S.C. 1254.

§ 318.10 [Amended]

2. Paragraph (c)(3)(i) of § 318.10 would be amended by revising the text of Footnote 1 of Table 3A as follows:

"The drying room times for flattened or oval sausages shall use a diameter derived by measuring the largest circumference and dividing by 3.14 (pi)."

3. Paragraph (c)(3)(iv) of § 318.10 would be revised to read as follows:

§ 318.10 Prescribed treatment of pork and products containing pork to destroy trichinae.

* * * * *

(c) * * *

(3) * * *

(iv) *Hams and pork shoulder picnics.* In the curing of hams and pork shoulder picnics, one of the methods below shall be used. For calculating days per pound, the establishment shall use the weight of the heaviest ham or picnic in the lot.

§318.10 [Amended]

4. *Method No. 1* of paragraph (c)(3)(iv) of § 318.10 would be amended by removing the last sentence and replacing it with the following sentence: "The products shall finally be dried or smoked at a time and temperature not less than a combination prescribed in Table 5 of Method No. 3."

5. Method No. 2 of paragraph (c)(3)(iv) of § 318.10 would be removed and reserved as follows:

Method No. 2. [Reserved]

6. Method No. 3 paragraph (c)(3)(iv) of § 318.10 would be revised to read as follows:

Method No. 3 (A) *Curing* (other than bag curing). Establishments shall cure hams and shoulders by using a cure mixture containing not less than 70 percent salt by weight to cover all exposed muscle tissue and to pack the hock region. Establishments may also inject the ham or shoulder with a saturated curing solution. Curing time consists of a mandatory cure contact time and an optional equalization time.

(B) *Cure Contact Time.* This is the cure contact period, during which the establishment shall keep exposed muscle tissue coated with the cure mixture at least 28 days but for no less than 1.5 days per pound of ham or shoulder. Overhaul (removing the product and applying additional cure mixture) is optional so long as the exposed muscle tissue remains coated with curing mixture.

(C) *Equalization.* The establishment may provide an equalization period after the minimum cure contact period in (B) above to permit the absorbed salt to permeate the product's inner tissues. Equalization is the time after the excess cure has been removed from the product at the end of the cure contact period until the product is placed in the drying room and the drying period begins. The total curing time (equalization plus cure contact) shall be at least 40 days and in no case less than 2 days per pound of uncured ham or shoulder.

(D) *Removing Excess Cure.* After the required cure contact period, the establishment may remove excess cure mixture from the product's surface mechanically or by rinsing up to to 1 minute with water, but not by soaking.

(E) *Bag Curing.* Bag curing is a traditional ham curing technique in which the manufacturer wraps the ham and all of the cure mixture together in kraft paper then hangs individually. The paper keeps the extra cure mixture in close contact with the product making reapplication of salt unnecessary, and it protects the product from mites and insects. The establishments may employ the bag curing method as an alternative to (A) through (E) above. Such establishment shall apply a cure mixture containing at least 6 pounds of salt per 100 pounds of uncured product. The establishment shall rub the curing mixture into the exposed muscle tissue, pack the hock region with the curing mixture, and use uncoated wrapping paper to wrap the product together with any remaining curing mixture. The bag cured product shall remain wrapped throughout the curing period and may or may not remain wrapped during the drying period. In any case, the curing period shall be at least 40 days but not less than 2 days per pound of uncured ham or shoulder. After curing, the cured product shall be exposed to a drying time and temperature prescribed in Table 5.

(F) *Curing Temperature.* During the curing period the establishment shall use one of the following procedures:

1. The establishment shall control the room temperature at not less than 35 °F nor greater than 45 °F for the first 1.5 days per pound of product, and not less than 35 °F nor greater

than 55 °F for the remainder of the curing period.

2. The establishment shall monitor and record daily product temperature. The room temperature need not be controlled but days on which the product temperature drops below 35 °F shall not be counted as curing time. If the product temperature exceeds 45 °F within the first period of 1.5 days per pound of product or if it exceeds 55 °F for the remainder of the curing period, the establishment shall cool the product back to the 45 °F or 55 °F maximum, respectively.

3. The establishment shall begin curing product only between the dates of December 1 and February 13. The room temperature need not be controlled, but the establishment shall monitor and record daily room temperatures, and days in which the room temperature drops below 35 °F shall not be counted as curing time.

(G) *Drying.* After the curing period, establishments shall use one of three procedures for drying:

1. The establishment shall subject the product to a controlled room temperature for a minimum time and minimum temperature combination prescribed in Table 5 or for a set of such combinations in which the total of the fractional periods (in column 4 of Table 5) exceeds 1.5.

2. Establishments using uncontrolled room temperatures shall monitor and record the internal product temperature. The drying period shall be complete when one of the time/temperature combinations of Table 5 is satisfied or when the total of the fractional values for the combinations exceeds 1.5.

3. Establishments using uncontrolled room temperatures shall dry the product for a minimum of 160 days including the entire months of June, July, and August. This procedure is obviously dependent on local climatic conditions and no problem exists with respect to current producers who use this procedures. Future applicants shall demonstrate that their local climatic conditions are equal to or warmer than those the National Oceanic and Atmospheric Administration reported for Boone, North Carolina, station 31-00977, 1951 through 1980.

MONTHLY TEMPERATURES (5F) FOR BOONE, NC, 1951-1980

Jan.	Feb.	Mar.	Apr.	May	Jun.	Jul.	Aug.	Sep.
Normal Average Temperatures: 32.2	34.1	41.3	51.2	59.1	65.1	68.3	67.5	61.6
Normal Minimum Temperatures: 22.8	24.2	30.8	39.6	48.1	54.7	58.5	57.6	51.6

Drying Times and Temperatures for Trichina Inactivation in Hams and Shoulders.

TABLE 5.—MINIMUM DRYING DAYS AT A MINIMUM TEMPERATURE*

Minimum drying temperature		Minimum days at drying temperature	Fractional period for one day of drying
Degrees fahrenheit	Degrees centigrade		
130	54.4	1.5	.67
125	51.7	2	.50
120	48.9	3	.33
115	46.1	4	.25
110	43.3	5	.20
105	40.6	6	.17
100	37.8	7	.14
95	35.0	9	.11
90	32.2	11	.091
85	29.4	18	.056
80	26.7	25	.040
75	23.9	35	.029

* Interpolation of these times or temperatures is not acceptable; establishments wishing to use temperatures or times not in this Table shall first validate their efficacy as provided by 318.10(c)(4) of this section.

7. Method No. 4 of paragraph (c)(3)(iv) of § 318.10 would be added to read as follows:

Method No. 4. (A) *Cure.* Establishments shall cure hams and shoulders by using a cure mixture containing not less than 71.5 percent salt by weight to cover all exposed muscle tissue and to pack the hock region. Establishments may substitute potassium chloride (KC1) for up to half of the required salt on an equal weight basis.

(B) *Curing.* Establishments shall apply the cure at a rate not less than 5.72 pounds of salt and KC1 per hundred pounds of fresh meat. The cure shall be applied in approximately three equal amounts at three separate times during the first 14 days of curing.

(C) *Cure Contact Time.* Establishments shall keep the product in contact with the cure mixture for no less than 2 days per pound of fresh meat but for at least 30 days. Establishments shall maintain the curing temperature at no less than 35 °F during the cure contact time.

(D) *Equalization.* After the cure contact period, establishments shall provide an added equalization period of no less than 1 day per pound of fresh meat but at least 14 days. Equalization is the time after the excess cure has been removed from the product, the end of the cure contact period, and before the drying period begins. Establishments may substitute additional cure contact days for an equal number of equalization days.

(E) *Removing Excess Cure.* After the required cure contact period, the establishment may remove excess cure mixture from the product's surface mechanically or by rinsing up to 1 minute with water, but not by soaking.

(F) *Drying.* After the curing period, establishments shall use one of the controlled temperature methods for drying listed in Method No. 3 of this subparagraph.

Done at Washington DC, on April 14, 1989.

Lester M. Crawford,

Administrator, Food Safety and Inspection Service.

[FR Doc. 89-9366 Filed 4-19-89; 8:45 am]

BILLING CODE 3410-DM-M

FEDERAL HOME LOAN BANK BOARD

12 CFR Parts 523

[No. 89-1336]

Extension of Time Period for Board Action on Outstanding Proposal

Date: April 13, 1989.

AGENCY: Federal Home Loan Bank Board.

ACTION: Proposed rule; extension of time period for Board action.

SUMMARY: Pursuant to its regulatory review procedures, see Board Res. No. 88-269, 53 FR 13156 (April 21, 1988), the Federal Home Loan Bank Board ("Board") hereby gives notice that it is extending the time period for possible Board action on the following outstanding proposed regulation as outlined in **SUPPLEMENTARY INFORMATION.** The Board is taking this action in order to allow adequate time for consideration of a number of complex issues raised by this proposal. It is not soliciting additional comments on this proposal.

DATE: April 13, 1989.

FOR FURTHER INFORMATION CONTACT: Mary Hoyle, Paralegal, Specialist, (202) 906-7135, Regulations and Legislation Division, Office of General Counsel, Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552 or the appropriate contact persons listed in

the referenced **Federal Register** document.

SUPPLEMENTARY INFORMATION: Although the comment period on the following proposal has been closed for more than six months, the Board still has the proposal under active consideration for possible further action. The Board is hereby extending the time for possible final Board action on this proposal to July 13, 1989.

Readmission of Federal Home Loan Bank Members Terminating Their Status as Insured Institutions, adopted by the Board on August 5, 1988; 53 FR 30686 (August 15, 1988).

The Board notes that this action does not constitute a representation that the Board will take final action with respect to this proposal, only that it may do so within this extension of time. Moreover, this action carries no implication whatsoever with respect to the Board's view of the merits of the proposal.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 89-9497 Filed 4-19-89; 8:45 am]

BILLING CODE 6720-01-M

SMALL BUSINESS ADMINISTRATION

13 CFR Part 120

Business Loan Policy

AGENCY: Small Business Administration.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Small Business Administration (SBA) does not guarantee a loan to a close relative of designated persons. Under this proposed rule, SBA would clarify that such close relative would be ineligible regardless of whether he or she was a member of the household of such designated person.

DATE: Comments must be submitted on or before May 22, 1989.

ADDRESS: Comments may be mailed to Charles R. Hertzberg, Deputy Associate Administrator for Financial Assistance, Small Business Administration, 1441 L Street, NW., Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Charles R. Hertzbert, 202/635-6574.

SUPPLEMENTARY INFORMATION: The Small Business Administration (SBA) will not guarantee a loan to an "associate of the lender." That is a term defined in § 120.2-2 of SBA regulations and it includes several categories of persons and enterprises. The purpose of this prohibition is to preclude the possibility of a conflict of interest or the appearance thereof between an SBA participating lender and the borrower of an SBA guaranteed loan.

At the present time, "close relative" of the designated persons is defined by listing types of relatives who are members of the household of such designated persons. The requirement that such relative be a member of the household does not truly address the conflict of interest issue. Thus, presently the mother-in-law of a director of an SBA participating lender would not be eligible for an SBA guaranteed loan if she lived in the same household with such director, but she would be eligible if she lived in a household separate from the director. This is a difference without a distinction.

Accordingly, SBA proposes to eliminate the narrow circumscription of being a member of the household of the designated person. Thus, a "close relative" would be defined as an ancestor, lineal descendant, brother or sister or the lineal descendant of either, spouse, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law or sister-in-law, without regard to whether he or she was a member of the household of the designated person.

For purposes of the Regulatory Flexibility Act (5 U.S.C. 605(b)), SBA certifies that this proposed rule, if promulgated in final form, will not have a significant impact on a substantial number of small entities since SBA believes that only a small number of potential loans fall into the category of "close relative" of designated persons. SBA certifies that this proposed rule does not constitute a major rule for the purposes of Executive Order 12291, since the change is not likely to result in an annual effect on the economy of $100 million or more.

The proposed rule, if promulgated in final form, would not impose additional reporting or recordkeeping requirements which would be subject to the Paperwork Reduction Act, 44 U.S.C. Chapter 35.

This proposed rule would not have federalism implications warranting the preparation of a Federal Assessment in accordance with Executive Order 12612.

List of Subjects in 13 CFR Part 120

Loan programs/Business.

Pursuant to the authority contained in section 5(b)(6) of the Small Business Act (15 U.S.C. 634(b)(6)), SBA proposes to amend Part 120, Chapter I, Title 13, Code of Federal Regulations, as follows:

PART 120—BUSINESS LOAN POLICY

1. The authority citation for Part 120 continues to read as follows:

Authority: 15 U.S.C. 634(b)(6) and 636 (a) and (h).

2. Section 120.2-2(d) would be revised to read as follows:

§ 120.2-2 Associate

* * * * *

(d) A "close relative" as used in paragraphs (a) and (b) of this definition only, means ancestor, lineal descendant, brother or sister of the lineal descendants of either, spouse, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law.

Dated: March 31, 1989.

James Abdnor,

Administrator.

[FR Doc. 89-9387 Filed 4-19-89; 8:45 am]

BILLING CODE 8025-01-M

13 CFR Part 120

Business Loan Policy

AGENCY: Small Business Administration.

ACTION: Notice of proposed rulemaking.

SUMMARY: Section 103 of the Small Business Administration Reauthorization and Amendment Act of 1988, Pub. L. 100-590 (102 Stat. 2989), enacted November 3, 1988, amends the Small Business Act (15 U.S.C. 636) with respect to loans by Preferred Lenders. This proposed rule would implement such amendment, would limit the Preferred Lenders Program to loans over $155,000 and would prohibit Preferred Lenders from selling all or any part of the unguaranteed portion.

DATE: Comments must be submitted on or before June 19, 1989.

ADDRESS: Comments may be mailed to: Charles R. Hertzberg, Deputy Associate Administrator, for Financial Assistance, Small Business Administration, 1441 L Street, NW., Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Charles R. Hertzberg, 202-653-6574.

SUPPLEMENTARY INFORMATION: Pursuant to statutory authority (15 U.S.C. 634(b)(7)) the Small Business Administration (SBA) has implemented the operation of a Preferred Lenders Program (PLP) in its regulations (Title 13, Code of Federal Regulations, Chapter I, Part 120, Subpart D). Under PLP a lender's guaranty by SBA presently cannot exceed 75 percent of the amount of the loan. Section 103 of Pub. L. 100-590, enacted November 3, 1988, limits the SBA guaranty for a PLP loan to no more than five percentage points less than the percentage for other loans (non-PLP) guaranteed pursuant to Section 7(a)

of the Small Business Act (15 U.S.C. 636(a)).

Under the present law and the implementing regulations, an SBA lender which makes a guaranteed loan of $155,000 or less will obtain an SBA guaranty of no less than 90 percent. If the loan is greater than $155,000, the guaranty cannot be more than 85 percent. By implementing Section 103 of Pub. L. 100-590, SBA is proposing to guaranty 80 percent of a PLP loan in excess of $155,000 and to prohibit any PLP loan of $155,000 or less. Thus, for a PLP loan over $155,000 the Preferred Lender would be at risk for five percentage points more than a regular loan or a loan made under the Certified Lenders Program. This would continue to ensure that a Preferred Lender will process, service and liquidate a PLP loan at a high level.

SBA has decided that it cannot forgo its review function if the guaranty were to be above 80%. Since PLP loans are subject to no SBA review during their making and processing, SBA under this proposed regulation, will not extend its guaranty to those loans of $155,000 or less. The PLP Program permits carefully selected, experienced lenders with an excellent record in SBA lending to make guaranteed loans without submitting the application to SBA for approval. In return, the lender agrees to accept an SBA guaranty that is significantly less than the 85 to 90% received on most other loans. The purpose is to more fully utilize the resources of SBA's best lenders, reduce processing time on strong credits and help SBA deal with personnel considerations.

The lower guaranty percentage has been the plan's keystone from the beginning. The program is to be used only for the strongest credits: those on which the SBA can justify giving a lender the extraordinary privilege to unilaterally put government funds at risk.

Any time that a PLP Lender feels it needs the extra guaranty percentage, it has the unqualified right to submit the loan application to SBA for processing under Certified Lender (three-day turnaround) or regular processing. It is with these riskier loans that SBA must retain its authority to say yes or no. The unilateral approval authority of PLP should not be applied to loans that are so risky that the lender must seek the higher guaranty.

In addition, in order to ensure that a Preferred Lender will continue to service a PLP loan properly (particularly since SBA does not review the file as the loan is processed and made), SBA is proposing that a Preferred Lender will not be allowed to sell or transfer any part of the 20 percent of the PLP loan that is unguaranteed by SBA. Thus, the Preferred Lender would remain at risk for the full 20 percent. This would not preclude the Preferred Lender from selling or transferring part of the unguaranteed portions of non-PLP loans so long as such Lender complies with SBA rules and contractual provisions. The preponderance of loans made by Preferred Lenders are non-PLP loans so they would still be able to sell parts of the unguaranteed portions for most of their loans.

For purposes of the Regulatory Flexibility Act (5 U.S.C. 605(b)), SBA certifies that this proposed rule, if promulgated in final form, will not have a significant impact on a substantial number of small entities because the proposed changes would affect the speed in which a loan would be processed and not whether a loan would be made. SBA certifies that this proposed rule does not constitute a major rule for the purposes of Executive Order 12291, since the change is not likely to result in an annual effect on the economy of $100 million or more.

The proposed rule, if promulgated in final form, would not impose additional reporting or recordkeeping requirements which would be subject to the Paperwork Reduction Act, 44 U.S.C. Chapter 35.

This proposed rule would not have federalism implications warranting the preparation of a Federal Assessment in accordance with Executive Order 12612.

Lists of Subjects in 13 CFR Part 120

Loan Programs/Business.

Accordingly, pursuant to the authority contained in Section 5(b)(6) of the Small Business Act (15 U.S.C. 634(b)(6)), SBA proposes to amend Part 120, Chapter I, Title 13, Code of Federal Regulations, as follows:

PART 120—BUSINESS LOAN POLICY

1. The authority citation for Part 120 continues to read as follows:

Authority: 15 U.S.C. 634(b)(6) and 636 (a) and (h).

2. Section 120.403-1 is proposed to be revised to read as follows:

§ 120.403-1 Amount of PLP loan and of maximum guaranteed portion

The amount of a loan guaranteed under this program shall be greater than $155,000 and the amount of the guaranteed portion shall not exceed $750,000.

3. Section 120.403-2 is proposed to be revised to read as follows:

§ 120.403-2 Maximum percentage of PLP loan to be guaranteed.

Under this program, SBA shall not guarantee more than 80% of any loan greater than $155,000. No PLP loan shall be made for $155,000 or less.

4. Section 120.403-7 is proposed to be amended by changing the heading and by adding a new paragraph (d) to read as follows:

§ 120.403-7 Limitations on preferred lenders; SBA access.

* * * * *

(d) Sale of Part of Unguaranteed Portion. A Preferred Lender is prohibited from selling or transferring all or any part of the unguaranteed portion of a PLP loan.

Dated: January 30, 1989.

(Catalog of Federal Domestic Assistance Programs No. 59.012, Small Business Loans)

James Abdnor,

Administrator.

[FR Doc. 89-9388 Filed 4-19-89; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 88-ANM-20]

Proposed Amendment, Cut Bank Control Zone, Cut Bank, MT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend the Cut Bank Control Zone, Cut Bank, Montana, from full-time to part-time. A reduction in personnel staffing of the Cut Bank Flight Service station has resulted in weather observations not being available 24 hours a day. This action will bring publications up-to-date giving continuous accurate information to the aviation public.

DATE: Comments must be received on or before May 22, 1989.

ADDRESS: Send comments on the proposal in triplicate to: Manager, Airspace & System Management Branch, ANM-530, Federal Aviation Administration, Docket No. 88-ANM-20, 19700 Pacific Highway South, C-68966, Seattle, Washington 98168.

The Official docket may be examined at the same address. An informal docket may also be examined during normal business hours at the address listed above.

FOR FURTHER INFORMATION CONTACT: Art Corwin, ANM-537, Federal Aviation Administration, Docket No. 88-ANM-20, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168, Telephone: (206) 431-2576.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, enironmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 88-ANM-20". The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking any action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination at the address listed above both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Airspace & System Management Branch, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular 11-2 which describes the application procedure.

The Proposal

The FAA proposes an amendment to § 71.171 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to amend the Cut Bank Control Zone, Cut Bank, Montana, from full-time to part-time. A reduction in personnel staffing of the Cut Bank Flight Service Station has resulted in weather observations not being available 24 hours a day, and therefore, full-time control zone services will not be available. The admendment will allow for changes in the hours of effectiveness by issuances of Notices to Airmen when minor variations in time of designation are anticipated.

Section 71.171 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6E, dated January 3, 1989.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Control zones.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration propose to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.171 [Amended]

2. Section 71.171 is amended as follows:

Cut Bank Montana Control Zone [Amended]

Add "The Control Zone shall be effective during the specified dates and times established in advance by a Notice to Airmen. The effective date and time will therefore be continuously published in the Airport/Facility Directory."

Issued in Seattle, Washington, on March 10, 1989.

Temple H. Johnson, Jr.,

Manager, Air Traffic Division, Northwest Mountain Region.

FR Doc. 89-9293 Filed 4-19-89; 8:45 am]

BILLING CODE 4910-13-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 250 and 259

[Rel. No. 35-24862; File No. S7-2-89]

Request for Comments on Certain Issues Arising Under the Public Utility Holding Company Act of 1935 Relating to Non-Utility Diversification by Intrastate Public-Utility Holding Companies

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule; extension of comment period.

SUMMARY: The Securities and Exchange Commission today announced that it has extended from May 15, 1989, until July 14, 1989, the date by which comments on Public Utility Holding Company Act Release No. 24815 (February 7, 1989) (54 FR 6701, February 14, 1989) concerning non-utility diversification by intrastate public-utility holding companies must be submitted.

DATE: Comments must be received on or before July 14, 1989.

ADDRESS: Persons wishing to express their views should submit comments in triplicate addressed to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 5th Street NW., Mail Stop 6-9, Washington, DC 20549. Reference should be made to File No. S7-2-89. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 450 5th Street NW., Washington, DC 20549.

FOR FURTHER INFORMATION CONTACT: William C. Weeden or Sidney L. Cimmet (202) 272-7676, Office of Public Utility Regulation. Division of Investment Management, Securities and Exchange Commission, 450 5th Street NW., Mail Stop 7-1, Washington, DC 20549

By the Commission.
April 13, 1989.
Jonathan G. Katz,
Secretary.
[FR Doc. 89-9436 Filed 4-19-89; 8:45 am]
BILLING CODE 8010-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 950

Wyoming Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Proposed rule; Public Comment Period and Opportunity for Public Hearing on Proposed Amendment.

SUMMARY: OSMRE is announcing the receipt of a proposed amendment to the Wyoming permanent regulatory program (hereinafter, the "Wyoming program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment pertains to authorities and definitions; permit applications; environmental protection performance standards; blasting for surface coal mining operations; variances for surface coal mining operations; coal exploration; self-bonding program; procedures applicable to surface coal mining operations; permit revisions; exploration by drilling; release of bonds or deposits for surface coal mining operations; inspections; enforcement and penalties for surface coal mining operations; designation of areas unsuitable for coal mining; and limited mining operations for ten acres or less of affected land. The amendment is intended to revise the State program to be consistent with the corresponding Federal standards.

This notice sets forth the times and locations that the Wyoming program and proposed amendment to that program are available for public inspection; the comment period during which interested persons may submit written comments on the proposed amendment; and the procedures that will be followed regarding the public hearing, if one is requested.

DATES: Written comments must be received by 4:00 p.m., m.d.t., May 22, 1989. If requested, a public hearing on the proposed amendment will be held on May 15, 1989. Requests to present oral testimony at the hearing must be received by 4:00 p.m., m.d.t. on May 5, 1989.

ADDRESSES: Written comments should be mailed or hand-delivered to Mr. Jerry R. Ennis at the address listed below. Copies of the Wyoming program, the proposed amendments, and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSMRE's Casper Field Office.

Mr. Jerry Ennis, Director, Casper Field Office, Office of Surface Mining Reclamation and Enforcement 100 E. B Street, Room 2128, Casper, Wyoming 82601-1918, Telephone: (307) 261-5776.

Office of Surface Mining Reclamation and Enforcement, Administrative Record Office, Room 5131, 100 L Street NW., Washington, DC 20240, Telephone: (202) 343-5492.

Department of Environmental Quality, Land Quality Division, Herschler Building—Third Floor West, 122 West 25th Street, Cheyenne, WY 82002, Telephone: (307) 777-7756.

FOR FURTHER INFORMATION CONTACT: Mr. Jerry R. Ennis, (307) 261-5776.

SUPPLEMENTARY INFORMATION:

I. Background on the Wyoming Program

On November 26, 1980, the Secretary of the Interior conditionally approved the Wyoming program. General background information on the Wyoming program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Wyoming program can be found in the November 26, 1980 **Federal Register** (45 FR 78637). Subsequent actions concerning Wyoming's program and program amendments can be found at 30 CFR 950.12, 950.15 and 950.16.

II. Proposed Amendment

On March 31, 1989 Wyoming submitted a proposed amendment to its program pursuant to SMCRA (administrative record no. WY-12-1). Wyoming submitted the proposed amendment in response to the December 23, 1985 and June 6, 1987 letters that OSMRE sent in accordance with 30 CFR 732.17(c). Wyoming proposes to amend the following Department of Environmental Quality/Land Quality Division rules and regulations relating to coal mining operation: Authorities and Definitions, Chapter I; Permit Applications, Chapter II; Environmental Protection Performance Standards, Chapter IV; Performance Standards for Special Categories of Coal Mining, Chapter V; Blasting for Surface Coal Mining Operations, Chapter VI; Underground Mining, Chapter VII; Variances for Surface Coal Mining Operations, Chapter IX; Coal Exploration, Chapter XI; Self-bonding Program, Chapter XII: Procedures Applicable to Surface Coal Mining Operations, Chapter XIII; Permit Revisions, Chapter XIV; Release of Bonds or Deposits for Surface Coal Mining Operations, Chapter XVI; Inspections, Enforcement and Penalties for Surface Coal Mining Operations, Chapter XVII; Designation of Areas Unsuitable for Surface Coal Mining, Chapter XVIII; Limited Mining Operations for Ten (10) Acres or Less of Affected Land, Chapter XX.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSMRE is now seeking comment on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Wyoming program

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "DATES" or at locations other than the Casper Field Office will not necessarily be considered in the final rulemaking or included in the administrative record.

Public Hearing

Persons wishing to testify at the public hearing should contact the person listed under "FOR FURTHER INFORMATION CONTACT" by 4:00 p.m., m.d.t. on May 22, 1989. The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to testify at a public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSMRE officials to prepare the adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to testify have been heard. Persons in the audience who have not been scheduled to testify and who wish to do so, will be heard following those who have been scheduled. The hearing

will end after all persons scheduled to testify and persons present in the audience who wish to testify have been heard.

Public Meeting

If only one person requests an opportunity to testify at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSMRE representatives to discuss the proposed amendment may request a meeting by contacting the person listed under "FOR FURTHER INFORMATION CONTACT." All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under "ADDRESSES." A written summary of each meeting will be made a part of the administrative record.

List of Subjects in 30 CFR Part 950

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Russell F. Price,

Acting Assistant Director, Western Field Operations.

Dated: April 12, 1989.

[FR Doc. 89-9485 Filed 4-19-89; 8:45 am]

BILLING CODE 4310-05-M

POSTAL SERVICE

39 CFR Part 111

Acceptance of Mailpieces Bearing an Incorrect Date in the Meter or Mailer's Precancel Postmark; Extension of Time for Comment

AGENCY: Postal Service.

ACTION: Proposed rule; extension of comment period.

SUMMARY: On March 14, 1989, the Postal Service published in the **Federal Register** (54 FR 10563) a proposed rule that would change existing procedures concerning the acceptance of mailings bearing and incorrect date in the meter or mailer's precancel postmark. The Postal Service requested comments by April 14, 1989. In response to a request for additional time, the Postal Service is extending the comment period to April 28, 1989.

DATE: Comments on the proposed rule change must be received on or before April 28, 1989.

ADDRESS: Address all comments to the Director, Office of Classification and Rates Administration, U.S. Postal Service, 475 L'Enfant Plaza West, SW., Washington, DC 20260-5360. Copies of all written comments will be available for inspection between 9 a.m. and 4 p.m., Monday through Friday, in Room 8430, at the above address.

FOR FURTHER INFORMATION CONTACT: Leo F. Raymond, (202) 268-5199.

Fred Eggleston,

Assistant General Counsel, Legislative Division.

[FR Doc. 89-9433 Filed 4-19-89; 8:45 am]

BILLING CODE 7710-12-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[NC-040; FRL-3558-6]

Approval and Promulgation of Implementation Plans; North Carolina: Revisions to the SIP Including PM_{10}

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: On May 2, 1988, the State of North Carolina submitted to EPA several revisions to the State Implementation Plan. The revisions were the result of three separate hearings held on February 15, 1988. The first hearing dealt with the adoption of New Source Performance Standards; a notice of the resulting delegation was published on June 22, 1988 (53 FR 23390). The third hearing dealt with revisions to the 111(d) plans along with other minor bookkeeping revisions; approval of these revisions was published on December 12, 1988 (53 FR 49881). The second hearing dealt with several miscellaneous revisions, including provisions for PM_{10}. This notice proposes to approve those revisions.

DATE: To be considered, comments must be received on or before May 22, 1989.

ADDRESSES: Written comments should be addressed to Rosalyn D. Hughes of EPA Region IV's Air Programs Branch (see EPA Region IV address below). Copies of the documents relevant to this proposed action are available for public inspection during normal business hours at the following locations:

EPA Region IV, Air Programs Branch, 345 Courtland Street, NE., Atlanta, Georgia 30365.

Air Quality Section, Division of Environmental Management, North Carolina Department of Natural Respources and Community Development, 512 North Salisbury Street, Raleigh, North Carolina 27611.

FOR FURTHER INFORMATION CONTACT: Ms. Rosalyn D. Hughes, Air Programs Branch, EPA Region IV, at the above address and telephone number (404) 347-2864 or FTS-257-2864.

SUPPLEMENTARY INFORMATION: On May 2, 1988, the State of North Carolina submitted to EPA several revisions to the State Implementation Plan (SIP). The revisions were the result of three separate public hearings on February 15, 1988. The first hearing dealt with the adoption of New Source Performance Standards. EPA delegated to the State authority for the affected source category on June 1, 1988, and the public was notified on June 22, 1988 (53 FR 23390). The third hearing dealt with revisions to the 111(d) plan along with other minor bookkeeping revisions. EPA approved those revisions on December 12, 1988 (53 FR 49881).

The second hearing dealt with several revisions, including the State's PM_{10} provisions. The hearing affected the following regulations, which will be addressed in this notice: 15 NCAC 2D.101, Definitions; 15 NCAC 2D.0104, Adoption by Reference Updates; 15 NCAC 2D.0302, Episode Criteria; 15 NCAC 2D.0403, Suspended Particulate; 15 NCAC 2D.0409, Particulate Matter; 15 NCAC2D.0501, Compliance with Emission Control Standards, 15 NCAC 2D.0530, Prevention of Significant Deterioration; 15 NCAC 2D.0531, Sources in Non-Attainment Areas; 15 NCAC 2D.0532, Sources Contributing to an Ambient Violation; 15 NCAC 2D.0913, Determination of Volatile Content of Surface Coatings; 15 NCAC 2D.0916, Determination of VOC Emissions from Bulk Gasoline Terminals; 15 NCAC 2D.0939, Determination of Volatile Organic Compound Emissions; 15 NCAC 2D.0940, Determination of Leak Tightness and Vapor Leaks; 15 NCAC 2H.061, Purpose and Scope; and 15 NCAC 2H.0603, Applicability.

SIP Amendments

The definitions which are being added to meet the federal PM_{10} requirements are for "PM_{10}", "particulate emissions," and "PM_{10} emissions." The definition of "suspended particulate" is being changed to "total suspended particulate." At the request of EPA, the term "air pollutant" is being defined. Also, in order to facilitate the permitting process the terms "construction," "facility," "owner or operator," "permitted," and "source" are being defined. All of these definitions are acceptable to EPA.

North Carolina adopted a new regulation in response to a legislative amendment which allows amendments to referenced federal regulations to be adopted without going through the normal rulemaking process. Regulation, 2D.0104 effects eight other regulations

by automatically incorporating by reference amendments to the Code of Federal Regulations (CFR). The eight regulations affected (2D.0501, 2D.0530, 2D.0531, 2D.0532, 2D.0913, 2D.0916, 2D.0939, and 2D.0940) are amended by deleting from them the mention of a specific version of the CFR. This change is approvable for 2D.0501, 2D.0913, 2D.0916, 2D.0939, and 2D.0940 because it allows future amendments to EPA test methods and sampling procedures in the CFR to be incorporated in the North Carolina regulations without having to go through the normal rulemaking process. A problem, however, does exist with automatically updating Regulations 2D.0530 and 2D.0532. These two regulations deal with prevention of significant deterioration and new source review. The automatic incorporation of CFR amendments in these regulations does not mean that the federally enforceable SIP is automatically revised. To revise the federally approved SIP, North Carolina must submit the revision to EPA after the revision has gone through the procedural requirements of 40 CFR 51.102, and EPA will approve it as part of the SIP. In response to this problem, North Carolina committed to restore to 2D.0530 and 2D.0532 the reference to a specific revision of the CFR and to the removal of the 2D.0530 and 2D.0532 references in 2D.0104. Based on this committal, EPA is proposing to approve 2D.0104. If 2D.0104, 2D.0530, and 2D.0532 are not revised by October 1989 EPA will withdraw the proposed approval and propose disapproval.

Regulation 2D.0409, Particulate Matter, is being added to incorporate the two new PM_{10} ambient air quality standards. It also includes methods used to determine attainment of the PM_{10} standards which are the same as the standards and methods in the July 1, 1987, **Federal Register** notice (52 FR 24 634).

Regulations 2D.0530 and 2D.0531 and 2D.0532 are being amended to specify the transitional provisions to be used in changing from the total suspended particulate standard to the PM_{10} standard and to add the PM_{10} significance levels. These two regulations are also affected by 2D.0104. Since North Carolina has committed to removing the antomatic updating clause from 2D.0530 and 2D.0532 at the next public hearing, EPA is proposing approval of the two revised regulations. Final approval will be contingent upon the removal of the clause.

Regulation 2H.0601, Purpose and Scope, is being amended to delete a paragraph that paraphrases North Carolina General Statute 143-215-108(a), as recommended by the State's Office of Legal Affairs. Also on the advice of the Office of Legal Affairs, the permit requirements for complex sources have been clarified. The final amendment to 2H.0601 requires the owner or operator seeking an exemption from permitting requirements to demonstrate that both the emission standards and air quality standards will not be contravened.

Regulation 2H.0603, Applicability, is being amended to require incinerators constructed before July 1, 1987 to use an allowable particulate emission rate of 0.08 grains per dry standard cubic foot (0.08 grf/dscf) instead of the applicable pounds per hour rate in order to have their permits adopted as part of the SIP. Region IV and North Carolina have been working on this revision of several years and concur on this version.

Proposed Action

EPA had reviewed the submitted material and found it to meet the requirements of 40 CFR Part 51. Therefore, EPA is proposing the approve the North Carolina revisions, including the PM_{10} provisions, and is soliciting public comments.

For further information of EPA's analysis, the reader may consult a Technical Support Document which contains a detailed review of the materials submitted. This is available at the EPA address given above. Interested persons are invited to submit written comments within thirty days of the publication of this notice.

Under 5 U.S.C. 605(b), I certify that these revisions will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

The Office of Management and Budget (OMB) has exempted this rule from the requirements of section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 52

Air Pollution control, Hydrocarbons, Particulate matter, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401-7642.

Dated: April 12, 1989.

Lee A. DeHihns, III,

Acting Regional Administrator.

[FR Doc. 89-9510 Filed 4-19-89; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 89-77; FCC 89-90]

Broadcast Television Service; Transfer of Control of Certain Licensed Non-Stock Entities

AGENCY: Federal Communications Commission.

ACTION: Notice of inquiry.

SUMMARY: The Commission seeks comment on proposed guidelines for determining when a transfer of control of certain types of licensed non-stock entities is deemed to occur, and on proposed clarifications of the procedures to be followed in seeking Commission consent to such transfer. This action is needed to promote efficiency in the licensing of the electromagnetic spectrum by clarifying how the FCC's requirements regarding transfers of control should be applied to non-stock entities.

DATES: Comments are due by June 1, 1989, and reply comments are due by June 16, 1989.

ADDRESS: Federal Communication Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: David E. Horowitz, Mass Media Bureau, Policy and Rules Division, (202) 632-7792.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Inquiry (Notice)* in MM Docket No. 89-77, adopted March 16, 1989, and released April 11, 1989. The complete text of this *Notice* is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC, and also may be purchased from the Commission's copy contractor, International Transcription Services, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Summary of Notice of Inquiry

1. This *Notice* is issued to develop a record on which to forumlate guidelines for identifying when transfers of control of certain types of licensed non-stock entities are deemed to occur, and on which to clarify the procedures to be followed when such transfers are proposed. Although the Commission has established a general framework for addressing these matters in connection with "traditional" stock corporations, we presently lack a comparably articulated Commission policy for determining when a transfer of control

of a non-stock entity has occurred. The lack of such a policy has created a degree of uncertainty among licensees, and on several occasions has unnecessarily exposed various non-stock entities to attack.

2. The Commission believes that the basic principles and approaches used regarding transfers of control of stock corporations can and should be applied to those non-stock entities that (a) are directed by a governing board, and (b) operate pursuant to a written organizational document. It appears that three basic types of non-stock entities possess these characteristics: (1) membership organizations; (2) certain governmental bodies; and (3) organizations with self-perpetuating boards.

3. For membership organizations and governmental entities, our proposed approach would generally track the framework used in the context of stock corporations. Thus, gradual changes in the boards of these two types of non-stock entities—even if resulting in the replacement of a majority of the original board members—would not be considered a transfer of control and would need only be reported as appropriate on the licensee's ownership reports. A sudden change in the majority of the governing board, however, would be considered an insubstantial transfer of control, subject to the "modified short form" consent procedures we established for stock corporations (*i.e.*, submission of an FCC Form 316 application, supplemented with information on all the new board members and nominees regarding citizenship, adverse findings of law violations, and other attributable media interests).

4. For non-stock entities that have self-perpetuating boards, we propose that (a) gradual changes in a self-perpetuating board would not constitute a transfer of control prior to the replacement of a majority of the board's members; (b) if the majority threshold is passed as a result of gradual changes, an insubstantial transfer of control would occur and prior Commission approval would be required by application under the modified short form procedures; and (c) a sudden change in the majority would be considered a substantial transfer of control requiring the licensee to seek Commission approval by submission of a "long form" (FCC Form 315) application, in accordance with the full panoply of procedures set forth in section 309 of the Communications Act of 1934, as amended.

5. Before we formalize the above framework as a general statement of Commission policy, however, we invite comments from interested parties on various aspects of the framework. On the most basic level, we seek comment on whether our assumptions about the structure and operation of the three types of non-stock entities are correct. To the extent we have proposed to treat these entities in an analagous fashion to stock corporations because of similarities in structure and operation, we request comment on whether the non-stock entities possess any characteristics that differe sufficiently from those of stock corporations to justify a modification of the proposed framework. To the extent we have proposed, for non-stock entities, departures from (or additions to) the framework used in the stock context, we invite general comment. Although we have proposed to treat membership organizations and governmental entities the same, we seek specific comment on whether there are any special considerations that should be accorded governmental entities, either for practical reasons or for reasons of federal policy. In addition, as an alternative to the proposal described above for treating entities with self-perpetuating boards differently than the other two types of non-stock entities, we ask whether all three types should be treated the same, and, if so, which of the standards we have set forth should be applied to determine when a transfer of control occurs. Finally, we invite interested parties to comment on whether the proposed framework for non-stock entities can be extended beyond our specific proposals to cover certain situations where the analogy between stock corporations and non-stock entities appears less clear-cut.

Comment Information

6. Pursuant to applicable procedures set forth in Section 1.415 and 1.419 of the Commission's Rules, 47 CFR 1.415, 1.419, interested parties may file comments on or before June 1, 1989, and reply comments on or before June 16, 1989. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding.

7. Authority for this proposed rule making is contained in sections 4(i), 303, 308(b), 309(g), 319 and 403 of the Communications Act of 1934, as amended.

List of Subjects in 47 CFR Part 73

Radio broadcasting, Television broadcasting.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 89-9494 Filed 4-19-89; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 650

Atlantic Sea Scallop Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of availability of an amendment to a fishery management plan and request for comments.

SUMMARY: NOAA issues this notice that the New England Fishery Management Council (Council) has submitted Amendment 3 to the Fishery Management Plan for Atlantic Sea Scallops (FMP) for review by the Secretary of Commerce. Written comments are invited from the public. Copies of Amendment 3 may be obtained from the address below.

DATE: Comments on the Amendment should be submitted on or before June 12, 1989.

ADDRESS: All comments should be sent to Richard Roe, Regional Director, Northeast Region, National Marine Fisheries Service, One Blackburn Drive, Gloucester, Massachusetts 01930. Clearly mark the outside of the envelope "Comments on Amendment 3 to the Sea Scallop FMP."

Copies of Amendment 3 are available upon request from Douglas G. Marshall, Executive Director, New England Fishery Management Council, Suntaug Office Park, 5 Broadway (Route 1), Saugus, Massachusetts 01906.

FOR FURTHER INFORMATION CONTACT: Patricia A. Kurkul, Atlantic Sea Scallop FMP Coordinator, (508) 281-9331.

SUPPLEMENTARY INFORMATION: The Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*) requires that each Regional Fishery Management Council submit any fishery management plan or plan amendment it prepares to the Secretary of Commerce (Secretary) for review, approval and implementation. The Magnuson Act also requires that the Secretary, upon receiving the plan or amendment, immediately publish a notice of its availability for public review and comment. The Secretary will consider any public comments received in

determining whether or not to approve the plan or amendment.

Amendment 3 would require that all vessels must offload sea scallops within a twelve hour time window each day as follows:

State	Daily Time Period for Offloading
Maine and New Hampshire	7 a.m. to 7 p.m.
Massachusetts, Rhode Island and Connecticut.	5 a.m. to 5 p.m.
New York, New Jersey, Delaware, Maryland and Virginia.	6 a.m. to 6 p.m.
North Carolina, South Carolina, Georgia and Florida.	12 noon to 12 midnight

The purpose of Amendment 3 is to improve the enforceability of the meat count/shell height management standards for landed scallops. The offloading window covers different time periods in different states where sea scallops are offloaded in order to accommodate local industry practices. The offloading window reduces, by half, the time when enforcement agents can sample (weigh) scallops in order to establish compliance with the meat count/shell height size standards. Under Amendment 3, offloading scallops outside the time window would constitute a violation of the FMP'S implementing regulations, regardless of the actual meat count/shell height measurements of the offload scallops.

Proposed regulations proposed to implement Amendment 3 are scheduled to be published within 15 days.

Authority: 16 U.S.C. 1801 *et seq.*

List of Subjects in 50 CFR Part 650

Fish, Fisheries.

Dated: April 14, 1989.

Richard H. Schaefer,

Director of Office of Fisheries, Conservation and Management, National Marine Fisheries Service.

[FR Doc. 89-9460 Filed 4-17-89; 11:19 am]

BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 54, No. 75
Thursday, April 20, 1989

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

April 14, 1989.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) An indication of whether section 3504(h) of Pub. L. 96-511 applies; (9) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404-W Admin. Bldg., Washington, DC 20250; (202) 447-2118.

Extension

• Agricultural Marketing Service
Cotton Classing, Testing, and Standards
CN-246, 247, 248, 3575
Recordkeeping; On Occasion
Individuals or households; Businesses or other for-profit; Small business or organizations; 3,400 responses; 411 hours; not applicable under 3504(h)
Elvis W. Morris, (FTS) 222-2921

Revision

• Agricultural Stabilization and Conservation Service
Peanut Warehouse Contracts, Applications for Approval, Examination Reports, Bond, Warehouse Receipts, and Drafts
CCC-1006, 1006 A, 1011, 1023, 1025, 1028, 1028-A, 1029, 1032, 1032-1, 1033, 1036, 1041, 1041-VC, 1041-A, 1057
On occasion; Monthly; Annually; Daily
Farms; Businesses or other for-profit; 80,856 responses; 8,941 hours; not applicable under 3504(h)
David Kincannon, (202) 382-0152

Donald E. Hulcher,
Acting Department Clearance Officer.

[FR Doc. 89-9435 Filed 4-19-89; 8:45 am]
BILLING CODE 3410-01-M

Types and Quantities of Agricultural Commodities to Be Made Available for Donation Overseas Under Section 416(b) of the Agricultural Act of 1949 in Fiscal Year 1989

AGENCY: Office of the Secretary, USDA.
ACTION: Notice.

SUMMARY: This notice increases the quantities of agricultural commodities owned by the Commodity Credit Corporation to be made available for donation overseas under Section 416(b) of the Agricultural Act of 1949, as amended, during fiscal year 1989.

FOR FURTHER INFORMATION CONTACT: Mary Chambliss, Director, Program Analysis Division, Office of the General Sales Manager, FAS, USDA (202) 447-3573.

SUPPLEMENTARY INFORMATION: Section 416(b) of the Agricultural Act of 1949, as amended 7 U.S.C. 1431(b) ("Section 416(b)"), requires the Secretary of Agriculture to make available for donation overseas for each of the fiscal years 1986-1990, not less than certain minimum quantities of Commodity Credit Corporation ("CCC") uncommitted stocks. The minimum quantity of grains (wheat, rice, and feed grains) and oilseeds required to be made available shall be the lesser of 500,000 metric tons of CCC's uncommitted stocks or 10 percent of estimated year-end levels of CCC's uncommitted stocks. The minimum quantity of dairy products shall be 10 percent of CCC's uncommitted stocks, but not less than 150,000 metric tons to the extent that uncommitted stocks are available. The minimum quantity requirements may be waived by the Secretary if the Secretary determines, and reports to Congress, that there are insufficient valid requests for eligible commodities under Section 416(b) for any fiscal year, or the Secretary determines that the restrictions in furnishing commodities under section 416(b)(3) prevent making available commodities in such quantities.

A total of 900,000 metric tons of grains, including 500,000 metric tons of sorghum, and 4,500 metric tons of butter (frozen form only) was previously determined to be available for donation under Section 416(b) during fiscal year 1989. This determination was published in the **Federal Register** on November 18, 1988 (53 FR 46640). The purpose of this notice is to inform the public that such previous determination is revised by increasing the quantity of sorghum to be made available from 500,000 metric tons to 800,000 metric tons. With this increase, CCC will be able to meet additional commodity donation requests for sorghum.

Determination

Accordingly, I have determined that 1,200,000 metric tons of grains and oilseeds and 4,500 metric tons of dairy products shall be made available for donation overseas pursuant to Section 416(b) during fiscal year 1989. The kinds and quantities of comodities that shall be made available for donation are as follows:

	Commodity	Quantity (metric tons)
Grains and oilseeds	Corn	400,000
	Sorghum	800,000
Dairy products	Butter (frozen only)	4,500
Total		1,204,500

Done at Washington, DC this 14 day of April 1989.

Peter C. Myers,
Deputy Secretary.

[FR Doc. 89-9504 Filed 4-19-89; 8:45 am]
BILLING CODE 3410-10-M

Forest Service

Wild Horse Management

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Forest Service will prepare a plan and draft environmental impact statement (DEIS) for managing wild horses in the Lower Deer Creek Management Area (#42) on the Almanor Ranger District, Lassen National Forest, Tehama County, California. The agency gives notice of the full environmental analysis and decision-making process that is occurring on the proposal so that interested and affected people are aware of how they may participate and contribute to the final decision.

DATE: Comments concerning the scope of the analysis must be received by May 31, 1989.

FOR FURTHER INFORMATION CONTACT: Direct comments, suggestions and questions about the proposed Plan and DEIS to Laurence Crabtree, District Planning Officer, Almanor Ranger District, Lassen National Forest, P.O. Box 767, Chester, California 96020, phone 916–258–2141.

SUPPLEMENTARY INFORMATION: The 6,000 acre Brushy Mountain Wild Horse Territory was established pursuant to the 1971 Wild Horse and Burro Act. The Almanor Multiple Use Plan (1972) provides general guidance for the management of the wild horse range. Additionally, the proposed Lassen National Forest Land and Resource Management Plan includes management direction for this area. Direction in this proposed Plan will be considered because it is expected to be finalized before the wild horse plan is completed.

In preparing the DEIS, the Forest Service will identify and consider several alternatives. Preliminary proposals are:

1. No Action (A continuation of current level of management).
2. Eliminate the Wild Horse Territory and remove the horses.
3. Manage the wild horse herd at levels within the current carrying capacity of the Territory.
4. Use range management techniques to increase the carrying capacity of the Territory for wild horses.

Richard A. Henry, Forest Supervisor, Lassen National Forest, Susanville, California, is the responsible official.

Public participation will be especially important at several points during the analysis. The first point is during the scoping process (40 CFR 1501.7). In April 1989, the Forest Service will send a letter of management intent to Federal and State agencies and other individuals or organizations with possible interest in, or who may be affected by, the management of the wild horses. The letter will seek information, comments, and assistance regarding the management plan. Additionally, a public meeting is being held on April 25, 1989 at the CARD Center, Room 1–2, 545 Vallombrosa Ave., Chico, California at 7:00 p.m. This input will be used in preparation of the DEIS. The scoping process includes:

1. Identifying potential issues.
2. Identifying issues to be analyzed in depth.
3. Eliminating insignificant issues or those which have been covered by a relevant previous environmental analysis.
4. Exploring additional alternatives.
5. Identifying potential environmental effects of the proposed action and alternatives (i.e., direct, indirect, and cumulative effects and connected actions).
6. Determining potential cooperating agencies and task assignments.

Input from Forest Service specialists has identified the following concerns:

1. Private land that was historically part of the Wild Horse Territory is no longer available to them.
2. Plants and other indicators of range condition suggest the Territory is being degraded by the cumulative impacts of deer, wild horses and cattle.
3. The wild horses have declined from approximately 55 animals in 1974 to 30 in 1988 and are below numbers generally considered genetically viable for a herd.

The proposed plan and DEIS are expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review in September, 1989. At that time EPA will publish a notice of availability of the DEIS in the **Federal Register.**

The comment period on the DEIS will be 45 days from the date the EPA's notice of availability appears in the **Federal Register.** It is very important that those interested in the management of this wild horse herd participate at that time. To be the most helpful, comments on the DEIS should be as specific as possible and may address the adequacy of the statement or the merits of the alternatives discussed.

Comments on the Plan and DEIS will be analyzed and considered by the Forest Service in preparing the final EIS (FEIS), which is scheduled to be completed in December, 1989. In the FEIS the Forest Service is required to respond to the comments received (40 CFR 1503.4). The responsible official will consider the comments, responses, environmental consequences discussed in the FEIS, and applicable laws, regulations, and policies in making a decision regarding this proposal. The responsible official will document the decision and reasons for the decision in the Record of Decision. That decision will be subject to appeal under 36 CFR 217.

Date: April 12, 1989.

Richard A. Henry,

Forest Supervisor.

[FR Doc. 89–9442 Filed 4–19–89; 8:45 am]

BILLING CODE 3410–11–M

Soil Conservation Service

Sandy Run Creek Watershed; Cleveland and Rutherford Counties, North Carolina

AGENCY: North Carolina Department of Natural Resources and Community Development and the United States Department of Agriculture, Soil Conservation Service.

ACTION: Notice of finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council of Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Division of Soil and Water Conservation, North Carolina Department of Natural Resources and Community Development and the Soil Conservation Service, United States Department of Agriculture, give notice that an environmental impact statement is not being prepared for the Sandy Run Creek Watershed, Cleveland and Rutherford Counties, North Carolina.

FOR FURTHER INFORMATION CONTACT: David W. Sides, Director, Division of Soil and Water Conservation, North Carolina Department of Natural Resources and Community Development, P.O. Box 27687, Raleigh, North Carolina 27611, Telephone (919) 733–2302 or Bobbye J. Jones, State Conservationist, Soil Conservation Service, 310 New Bern Avenue, Room 535, Fifth Floor, Federal Building, Raleigh, North Carolina, 27601, Telephone (919) 790–2888.

SUPPLEMENTARY INFORMATION: The Environmental assessement of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Bobbye J. Jones, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project concerns a plan for watershed protection. The planned

works of improvement include accelerated technical and financial assistance to apply land treatment measures on 5,150 acres of cropland and 116 acres of woodland.

The Notice of A Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various federal, state, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting David W. Sides.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register.**

Dated: March 28, 1989.

("This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904—Watershed Protection and Flood Prevention—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with state and local officials.")

Bobbye J. Jones,

State Conservationist.

[FR Doc. 89-9213 Filed 4-19-89; 8:45 am]

BILLING CODE 3410-16-M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of the Census.

Title: Construction Project Report (Multifamily Residential).

Form Number: C-700(R).

Agency Approval Number: 0607-0163.

Type of Request: Extension.

Burden: 7,500 hours.

Number of Respondents: 2,500.

AVG Hours Per Response: 15 minutes.

Needs and Uses: This survey collects data on the amount of construction put in place each month from a nationwide sample of private multifamily residential construction projects. These statistics are used extensively by the Federal Government to make policy decisions and become part of the Gross National Product. They are used by the private sector for market analysis and other research.

Affected Public: Business or other for-profit organizations.

Frequency: Monthly.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Don Arbuckle 395-7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-3271, Department of Commerce, Room H6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Don Arbuckle, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: April 14, 1989

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 89-9535 Filed 4-19-89; 8:45 am]

BILLING CODE 3510-07-M

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of the Census.

Title: Construction Project Report (State and Local Governments, Form C-700(SL)

Form Number: C-700(SL)

Agency Approval Number: 0607-0171

Type of Request: Extension.

Burden: 15,000 hours.

Number of Respondents: 5,000.

Avg Hours Per Response: 15 minutes.

Needs and Uses: This form is used to collect the amount of construction put in place each month from a nationwide sample of new state and local government construction projects. The Federal Government uses these statistics to evaluate economic policy, to measure progress toward national goals, and as part of the Gross National Product. The private sector uses them to estimate the demand for building materials and to schedule production; distribution, and sales efforts.

Affected Public: State or local governments.

Frequency: Monthly.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Don Arbuckle 395-7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-3271, Department of Commerce, Room H6622, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Don Arbuckle, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: April 14, 1989.

Edward Michals

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 89-9536 Filed 4-19-89; 8:45am]

BILLING CODE 3510-07-M

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of the Census.

Title: 1990 Decennial Census—Maritime Enumeration.

Form Number: D-34, D-47.

Type of Request: New Collection.

Burden: 71 hours.

Number of Respondents: 850.

AVG Hours Per Response: 5 minutes.

Needs and Uses: The Bureau of the Census uses the data gathered on form D-47 to assign individuals aboard ship to the appropriate geographic areas for the 1990 Decennial Census.

Affected Public: Individuals or households.

Frequency: One time only.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Don Arbuckle, 395-7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-3271, Department of Commerce, Room H6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Don Arbuckle, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: April 14, 1989.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 89-9537 Filed 4-19-89; 8:45 am]

BILLING CODE 3510-07-M

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of the Census.

Title: Construction Project Report (Private Construction Projects)

Form Number: C–700.

Agency Approval Number: 0607–0153.

Type of Request: Extension.

Burden: 12,000 hours.

Number of Respondents: 4,000.

AVG Hours Per Response: 15 minutes.

Needs and Uses: The data gathered in the Construction Project Report are used extensively by the Federal Government in making policy decisions and calculating the Gross National Product. The data are also used by the private sector for market analysis and other research.

Affected Public: Business or other for-profit institutions.

Frequency: Monthly.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Don Arbuckle, 395–7340.

Copies of the above informaton collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–3271, Department of Commerce, Room H6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written and comments and recommendations for the proposed information collection should be sent to Don Arbuckle, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: April 14, 1989.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 89–9538 Filed 4–19–89; 8:45 am]

BILLING CODE 3510–07–M

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of the Census.

Title: CPS, SIPP, and NCS Participant-Observer Ethnographic Study of Within Household Undercoverage.

Form Number: CPS–1 Questionnaire & CPS–263 Advance Letter; SIPP–9100 AND SIPP–9105A Advance Letter; NCS–1 AND NCS–572A Advance Letter.

Type of Request: New.

Burden: 40 hours.

Number of Respondents: 180.

AVG Hours Per Response: 13.3 minutes.

Needs and Uses: The Census Bureau will use data collected from this study to improve within household coverage for current demographic surveys.

Affected Public: Individuals or households.

Frequency: One Time Only.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Don Arbuckle, 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–3271, Department of Commerce, Room H6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Don Arbuckle, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: April 14, 1989.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 89–9539 Filed 4–19–89; 8:45 am]

BILLING CODE 3510–07–M

National Oceanic and Atmospheric Administration

Coastal Zone Management; Federal Consistency Appeal by Auld Brass Hunting Club from an Objection by the South Carolina Coastal Council

AGENCY: National Oceanic and Atmospheric Administration.

ACTION: Notice of dismissal.

On September 14, 1987, Auld Brass Hunting Club (Appellant) filed with the Secretary of Commerce a notice of appeal under section 307(c)(3)(A) of the Coastal Zone Management Act of 1972, as amended (Act), 16 U.S.C. 1451 *et seq.*, and the Act's pertinent implementing regulations, 15 CFR Part 930, Subpart H. The appeal arose from an objection by the South Carolina Coastal Council (State) to Appellant's consistency certification for an after-the-fact permit from the U.S. Army Corps of Engineers for excavation to enlarge a drainage ditch and placement of the material excavated in wetlands along the Combahee River in Beaufort County, South Carolina. The appeal was stayed at the request of Appellant until recently.

Because Appellant failed to submit a mandatory brief, the Department of Commerce has dismissed the appeal for good cause pursuant to 15 CFR 930.128. Appellant is barred from filing another appeal from the State's objection to its consistency certification.

FOR FURTHER INFORMATION CONTACT: Stephanie S. Campbell, Attorney-Adviser, Office of the Assistant General Counsel for Ocean Services, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, 1825 Connecticut Avenue, NW., Suite 603, Washington, DC 20235, (202) 673–5200.

(Federal Domestic Assistance Catalog No. 11.419 Coastal Zone Management Program Assistance)

Date: April 12, 1989.

B. Kent Burton,

Assistant Secretary for Oceans and Atmosphere.

[FR Doc. 89–9385 Filed 4–19–89; 8:45 am]

BILLING CODE 3510–08–M

National Technical Information Service

Government-Owned Inventions; Availability for Licensing

April 7, 1989.

The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 335 U.S.C. 207 to achieve expeditious commercialization of results of federally funded research and development. Foreign patents are filed on selected inventions to extend market coverage for U.S. companies and may also be available for licensing.

Licensing information and copies of patent applications bearing serial numbers with prefix E may be obtained by writing to: Office of Federal Patent Licensing, U.S. Department of Commerce, P.O. Box 1423, Springfield, Virginia 22151. All other patent applications may be purchased, specifying the serial number listed below, by writing NTIS, 5285 Port Royal Road, Springfield, Virginia 22161 or by telephoning the NTIS Sales Desk at (703) 487–4650. Issued patents may be obtained from the Commissioner of Patents, U.S. Patent and Trademark Office, Washington, DC 20231.

Please cite the number and title of inventions of interest.

Douglas J. Campion,

Associate Director, Office of Federal Patent Licensing, National Technical Information Service, U.S. Department of Commerce.

Department of Agriculture

SN 6-875,911 (4,797,408)—Cockroach Repellents
SN 7-036,050 (4,804,384)—Acetylation of Lignocellulosic Materials
SN 7-063,358 (4,799,966)—Process for Converting Alpha to Beta-Lactose
SN 7-075,168 (4,781,922)—Control of Parasitic Nematode Ova with Bacillus Sphaericus
SN 7-247,547—Synergist for the Grape Root Borer Pheromone
SN 7-269,584—Herbicide Tolerance in Maize Plants
SN 7-270,939—Nucleic Acid Probes for Detections of Mycoplasma-Like Organisms
SN 7-271,825—Bovine Monoclonal Antibodies to Bovine Herpesvirus I from Sequential Fusion Heterohybridomas
SN 7-302,871—Novel Aminoglycoside Affinity Media for Separation of Macromolecules
SN 7-303,327—Microbial Detoxification of Xenobiotics
SN 7-303,328—Improved Flan-Type Pudding
SN 7-308,220—Application of Knowledge-Based System for Grading Meat

Department of Commerce

SN 6-909,433 (4-804,446)—Electrodeposition of Chromium from Trivalent Electrolyte
SN 7-268,430—Covered Inverted Offset Cassegrainian System

Department of Health and Human Services

SN 6-712,236 (4,797,368)—Adeno-Associated Virus as Eukaryotic Expression Vector
SN 6-888,960 (4,806,494)—Monoclonal Antibody Against Ovarian Cancer Cells (OVB-3)
SN 7-025,062 (4,803,202)—Substituted N-Methyl Derivatives of Mitindomide
SN 7-026,540 (4,796,622)—Oxyhydrogen Catalytic Thermal Tip for Angioplasty
SN 7-090,363—Thermal Fragmentation of Methylbenzylurea Disastereomers or Secondary Amines and Preparation of Optically Active Secondary Amines
SN 7-160,827—Molecular Cloning of the HIV Virus From Immortalized Cell Lines
SN 7-265,883—Immortalized Human Cell Lines
SN 7-270,030—Process for Detecting Generic Susceptibility to Cancer
SN 7-272,165—Peptides with Laminin Activity
SN 7-284,331—Cell Culture Medium for Human Liver Epithelial Cell Line
SN 7-285,559—Thymoleptic Peptides
SN 7-292,393—The Isolation of Diagnostic Glycoproteins to Taenia Solium, Immunoblot-Assay and Method for the Detection of Human Cysticercosis
SN 7-304,234—Human Derived Monocyte Attracting Purified Peptide Products Useful in a Method of Treating infection and Neoplasms in a Human Body
SN E-105-88—Method of Synthesis of Hydroxy-Substituted-4-Alkoxphenylacetic Acids
SN E-425-87—Breath Sampler

Department of the Interior

SN 7-091,812 (4,806,264)—Method of Selectively Removing Selenium Ions from an Aqueous Solution

[FR Doc. 89-9425 Filed 4-19-89; 8:45am]

BILLING CODE 3510-04-M

DEPARTMENT OF DEFENSE

Department of the Army; Open Meeting

Army Science Board

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates of the Meeting: 9-10 May 1989.

Time: 0800-1400 hours each day.

Place: Fort Huachuca, Arizona.

Agenda: The Army Science Board 1989 Summer Study on Maintaining State-of-the-Art in the Army Command and Control System has identified a subpanel of its members to investigate the plans and progress of testing activities on the Army Data Distribution System as well as other communications systems supporting command and control. This meeting is open to the public. Any person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695-3039 or 695-7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 89-9512 Filed 4-19-89; 8:45 am]

BILLING CODE 3710-08-M

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates of Meeting: 15 May 1989.

Time of Meeting: 0830-1600 hours.

Place: Fort McClellan, Alabama.

Agenda: The Army Science Board's Effectiveness Review Panel of the US Army Chemical, Research, Development and Engineering Center will visit the US Army Chemical Center and School at Fort McClellan to gather data for the conduct of the effectiveness reveiw of the Chemical, Research, Development and Engineering Center. This meeting will be closed to the public in accordance with section 552 (c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 2, subsection 10(d). The classified and unclassified matters and proprietary information to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. Contact the Army Science Board Administration Officer, Sally Warner, for further information at 202-695-3039 or 695-7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 89-9513 Filed 4-19-89; 8:45 am]

BILLING CODE 3710-08-M

Corps of Engineers, Department of the Army

Intent To Prepare a Draft Supplemental Environmental Impact Statement (DSEIS) for Proposed Elizabeth River and Southern Branch 45-foot and 40-Foot Navigation Improvements in the Vicinity of Norfolk Harbor, Hampton Roads, VA

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Notice of Intent.

SUMMARY: The U.S. Army Corps of Engineers, Norfolk District, prepared a feasibility report and final Environmental Inpact Statement in 1980 titled "Norfolk Harbor and Channels, Virginia, Deepening and disposal", which recommended further investigations leading to improvements to the Elizabeth River and Southern Branch portions of the project.

The recommended improvements include increasing the depth of the Elizabeth River and the Southern Branch of the Elizabeth River between Lamberts Point at Mile 9 and the Norfolk and

Western Railway Bridge at Mile 15 from 40 feet to 45 feet over its existing 375- to 750-foot width. Increasing the depth of the Southern Branch of the Elizabeth River between Norfolk and Western Railway Bridge and U.S. Routes 460 and 13 highway crossing at Mile 17.5 from 35 feet to 40 feet over its existing 250- to 500-foot width and providing a new 800-foot turning basin at the terminus of the channel improvement will also be accomplished.

FOR FURTHER INFORMATION CONTACT: Comments and questions concerning the proposed action should be addressed to Mr. Richard Klein (804) 441-7125; questions regarding the DSEIS should be addressed to Mr. Terrence Getchell (804) 441-7671. U.S. Army Corps of Engineers, Norfolk District, 803 Front Street, Norfolk, Virginia 23510.

SUPPLEMENTARY INFORMATION: 1. The DSEIS will be prepared in connection with a General Design Memorandum which will document the engineering and design investigations required to complete plans and specification and actual construction. Authority for the work is provided by Section 201(a) of Public Law 99-662, enacted 17 November 1986. The feasibility report, published as House Document No. 99-85 dated 18 July 1985, recommended the improvements which are the subject of the DSEIS.

2. Deepening the channels constructing the turning basin and widening the channel between Mile 15 and Mile 17.5 will be considered. Allowing the channels to remain in the present condition will also be evaluated. Disposal options include use of Craney Island Rehandling Basin, direct pumpout into Craney Island, ocean disposal and other upland locations, along the channels.

3. The project was discussed with key federal and state agencies on 25 October 1988. Significant issues included dredging methods, direct pumpout into the Craney Island Disposal Area as well as use of the Rehandling Basin, the contamination of channel sediments by polynuclear automatic hydrocarbons and a design of a future monitoring plan related to the use of the rehandling basin.

4. Further input from these agencies will be solicited both by letter and during scheduled coordination meetings held by the Dredging Management Branch, Norfolk District. U.S. Fish and Wildlife Service has agreed to perform work under the fish and Wildlife coordination Act and has provided a wildlife resource report. Further environmental consultation and review will be conducted in accordance with the National Environmental Policy Act and other applicable laws and regulation, including endangered species and cultural resources.

6. It is anticipated that the DSEIS will be available for public review and comment in June 1989.

April 10,1989.

J.J. Thomas,

Colonel, Corps of Engineers, District Engineer.

[FR Doc. 89-9514 Filed 4-17-89; 8:45 am]

BILLING CODE 3710-EN-M

DELAWARE RIVER BASIN COMMISSION

Commission Meeting and Public Hearing

Notice is hereby given that the Delaware River Basin Commission will hold a public hearing on Wednesday, April 26, 1989 beginning at 1:30 p.m. at the Trevose Hilton, 2400 Old Lincoln Highway, Trevose, Pennsylvania. The hearing will be part of the Commission's regular business meeting which is open to the public.

An informal pre-meeting conference among the Commissions and staff will be open for public observation at about 11:00 a.m. at the same location.

The subjects of the hearing will be as follows:

Applications for Approval of the Following Projects Pursuant to Article 10.3, Article 11 and/or Section 3.8 of the Compact:

1. *ALPO Petfoods, Inc. D-84-2 RENEWAL.* An application for the renewal of a ground water withdrawal project to supply up to 25.92 million gallons (mg)/30 days of water to the applicant's Allentown Plant from Well No. 6. Commission approval on March 28, 1984, was limited to five years and will expire unless renewed. The applicant requests that the total withdrawal from all wells remain limited to 25.92 mg/30 days. The project is located in South Whitehall Township, Lehigh County, Pennsylvania.

2. *Riverton Country Club D-85-10 RENEWAL.* An application for the renewal of a ground water withdrawal project to supply up to 6.0 mg/30 days of water to the applicant's irrigation system from Well Nos. 1A and 2. Commission approval on May 29, 1985 was limited to three years and will expire unless renewed. The project is located in Cinnaminson Township, Burlington County, New Jersey.

3. *Occidental Chemical Corporation D-85-41.* An application to modify an industrial waste treatment plant at the applicant's polyvinyl chloride manufacturing facility in Burlington Township, Burlington County, New Jersey. Process waste streams include flows from compound, calender and resin operations. The compound facility has been modified by addition of a charcoal filtering system for TSS removal. All process waste streams are combined with storm runoff and up to 0.02 million gallons per day (mgd) of treated sanitary wastes prior to discharge to Bustleton Creek, a tidal tributary to the Delaware River in Burlington Township. Based on monitoring reports, discharge from the facility averages 0.38 mgd. The applicant is seeking relief from the Commission's normal TDS effluent limit of 1000 mg/1 and requests permission to discharge a daily maximum of 2000 mg/1 TDS to Bustleton Creek. In addition, the applicant is to conduct a groundwater decontamination program at the site as per conditions specified in its New Jersey Department of Environmental Protection's permit.

4. *C. S. Water and Sewer Company D-87-96 CP.* An application for approval of a ground water withdrawal project to supply up to 4.32 mg/30 days of water to the applicant's distribution system from Well No. 5, and to limit the withdrawal from all wells to 4.88 mg/30 days as approved by Docket No. D-81-62 CP under the former ownership of the Lackawaxen Water and Sewer Company. The project is located in Lackawaxen Township, Pike County, Pennsylvania.

5. *Moon Nurseries Contracting, Inc. D-88-28.* A revised application for an increased allocation of ground water for a previously approved withdrawal from Well Nos. 1, 2, 3 and 3A which supply water to the applicant's nursery operation. The applicant requests that the withdrawal limit of 11.4 mg/30 days from all wells be increased to 15.9 mg/30 days. The project is located in Lower Makefield Township, Bucks County, Pennsylvania.

6. *Bath Borough Authority D-88-51 CP.* An application to expand a 0.3 mgd sewage treatment plant to process a design average flow of 0.41 mgd. The plant is to provide secondary treatment and will discharge to Monocacy Creek through the existing outfall. The project is designed to serve an equivalent population of 4,100 persons in Bath Borough and a portion of East Allen Township through the year 2000. The plant is located just south of Mill Street in Bath Borough, Northampton County, Pennsylvania.

7. *Borough of Doylestown D-88-78 CP.* An application to upgrade and expand a 0.6 mgd sewage treatment plant to

provide high quality secondary treatment of 0.9 mgd. The plant is located off Harvey Street in Doylestown Borough, Bucks County, Pennsylvania. The proposed plant includes a chemical treatment process for phosphorus removal, and is designed to remove 90 percent of the influent BOD_5. The plant is designed to serve an equivalent population of 6,080 persons in portions of Doylestown Township and Borough through the year 2009. Treatment plant effluent will continue to discharge through the existing outfall to Cooks Run, a tributary of Neshaminy Creek.

8. *Bangor Borough Authority D–88–87 CP.* An application to upgrade and expand a 0.8 mgd sewage treatment plant to process 1.6 mgd of wastewater for an equivalent population of 10,523 persons through the year 2010. The existing secondary treatment plant will be abandoned (with the exception of the anaerobic digesters) and replaced by two sequencing batch reactor systems operated in parallel. The proposed biological treatment operation is a combined carbon oxidation-nitrification process. Treatment plant effluent will continue to be discharged to Martins Creek, but a new cascading outfall will be constructed at the project site. The plant will continue to serve Bangor and Roseto Boroughs, in Northampton County, Pennsylvania. The plant is located off Pennsylvania Highway #191 in Washington Township, which surrounds these Boroughs.

9. *U.S. Department of Justice—Bureau of Prisons D–88–90 CP.* An application to expand the sewage treatment plant that serves the Otisville Federal Correctional Institution located in Mount Hope Village, New York, approximately 1.5 miles north of central Otisville in Orange County. The applicant seeks approval for the expansion of the 0.1 mgd plant to treat an average design flow of 0.2 mgd. The project is designed to remove more than 90 percent of the BOD and suspended solids plus provided nitrification and disinfection via ultraviolet light. Treatment plant effluent is discharged to an unnamed, intermittent tributary of Basher Kill, a tributary of the Neversink River. No modifications to the outfall are proposed.

10. *Northeast Land Company D–89–10 CP.* An application for approval of a ground water withdrawal project to supply up to 4.95 mg/30 days of water to the applicant's distribution system from existing Mid-Lake Well No. 1, and to limit withdrawal from all wells to 4.95 mg/30 days. The project is located in Kidder Township, Carbon County, Pennsylvania.

Documents relating to these items may be examined at the Commission's offices. Preliminary dockets are available in single copies upon request. Please contact George C. Elias concerning docket-related questions. Persons wishing to testify at this hearing are requested to register with the Acting Secretary prior to the hearing.

Richard C. Albert,

Acting Secretary.

April 11, 1989.

[FR Doc. 89–9419 Filed 4–19–89; 8:45 am]

BILLING CODE 6360–01–M

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notion of proposed information collection requests.

SUMMARY: The Director, Office of Information Resources Management, invites comments on proposed information collection requests as requird by the Paperwork Reduction Act of 1980.

DATES: An expedited review has been requested in accordance with the Act, since allowing for the normal review period would adversely affect the public interest. Approval by the Office of Management and Budget (OMB) has been requested by May 10, 1989.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Jim Houser, Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place NW., Room 3208, New Executive Office Building, Washington, DC 20503. Request for copies of the proposed information collection requests should be addressed to Margaret B. Webster, Department of Education, 400 Maryland Avenue SW., Room 5624, Regional Office Building 3, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Margaret B. Webster (202) 732–3915.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 3517) requires that the Director of OMB provide interested Federal agencies and persons an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Director, Office of Information Resources Management, publishes this notice with attached proposed information collection requests prior to submission of these requests to OMB. For each proposed information collection request, grouped by office, this notice contains the following information: (1) Type of review requested, e.g., new, revision, extension, existing, or reinstatement; (2) title; (3) frequency of collection; (4) the affected public; (5) reporting and/or Recodkeeping burden and (6) abstract. Because an expedited review is requested, the information collection request is also included as an attachment to this notice.

Dated: April 14, 1989.

George P. Sotos,

Acting Director for Office of Information Resources Management.

Office of Special Education and Rehabilitative Services

Type of Review: Expedited.

Title: Application for State Grants under the Technology-Related Assistance for Individuals with Disabilities Program.

Abstract: This form will be used by State agencies to apply for funding under the Application for State Grants under the Technology-Related Assistance for Individuals with Disabilities Program. The Department uses the information to make grant awards.

Additional Information: An expedited review is requested in order to make FY89 grant awards. This application contains the Standad Form SF–424 Federal Asistance Face Sheet and SF–424A Budget Information.

Frequency: Annually.

Affected Public: State or Local Governments.

Reporting Burden:

Responses: 30.

Burden Hours: 900.

Recordkeeping Burden:

Recordkeeping: 0.

Burden Hours: 0.

BILLING CODE 4000–01–M

Technology-Related Assistance for Individuals with Disabilities State Grants Program application package.

This application package is divided into parts. These parts are organized in the same manner in which applicants should organize the application.

Part I. Federal Assistance Face Sheet (Form SF-424 and Instructions).

Part II. Budget Information (Form SF-424 A, Sections A-F and Instructions).

Part III. Program Narrative.

Part IV. Assurances and Certifications.

Public reporting burden for this collection of information is estimated to average 30 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Education, Information Management and Compliance Division, Washington, D.C. 20202-4651; and to the Office of Management and Budget, Paperwork Reduction Project 1820-NEW, Washington, D.C. 20503.

Instructions for completion of Part III - Program Narrative

The program office recommends that the narrative section include information that is required according to the regulations in 345.21 and 345.22 (extension grant), and the evaluation criteria in 345.31.

The applicant is advised to include all necessary assurances and other required information.

The program office suggests that the applicant address the selection in the order the criteria are listed in the regulations.

[FR Doc. 89-9437 Filed 4-19-89; 8:45 am]
BILLING CODE 4000-01-C

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Office of Information Resources Management, invites comments on proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: An expedited review has been requested in accordance with the Act, since allowing for the normal review period would adversely affect the public interest. Approval by the Office of Management and Budget (OMB) has been requested by May 15, 1989.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Jim Houser, Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., Room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Margaret B. Webster, Department of Education, 400 Maryland Avenue, SW., Room 5624, Regional Office Building 3, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Margaret B. Webster, (202) 732-3915.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 3517) requires that the Director of OMB provide interested Federal agencies and persons an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, ort substantially interfere with any agency's ability to perform its statutory obligations.

The Director, Office of Information Resources Management, publishes this notice with attached proposed information collection requests prior to submission of these requests to OMB. For each proposed information collection request, grouped by office, this notice contains the following information: (1) Type of review requested, e.g., new, revision, extension, existing, or reinstatement; (2) title; (3) frequency of collection; (4) the affected public; (5) Reporting and/or Recordkeeping burden and (6) abstract. Because an expedited review is requested, the information collection request is also included as an attachment to this notice.

Dated: April 14, 1989.

George P. Sotos,

Acting Director for Office of Information Resources Management.

Office of Educational Research and Improvement

Type of Review: Expedited.

Title: Integrated Postsecondary Education Data System (IPEDS).

Abstract: IPEDS data provides information on postsecondary education, and its providers, enrollments, completions (by program and race/ethnicity of recipients), finance, staff and salaries. Data are used to create sampling frames, conduct institutional research and carry out mandates for the Bureau of Census, Office of Civil Rights, and the National Center for Education Statistics.

Additional Information: The Office of Management and Budget recently approved the IPEDS surveys for three years that end February 29, 1989. ED is requesting an expedited OMB review to extend the 1986-88 IPEDS surveys to May 1, 1990, and to delay implementing the newly approved IPEDS forms until the 1990-93 survey period.

The Office of Educational Research and Improvement is delaying implementation to allow enough time for an effective changeover to the new forms. A delay will also provide a window of opportunity for a coordinated approach to software development between OERI and the States. Such a "window" would potentially avoid duplicate software development activities, particularly between the States.

Frequency: Annually.

Affected Public: Individuals or households; businesses or other for-profit; non-profit institutions; small businesses or organizations.

Recordkeeping Burden:
Recordkeepers: 0,
Burden Hours: 0.

Institutional Characteristics

Reporting Burden:
Responses: 12,400.
Burden Hours: 11,000.
Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0.

Institutional Activity

Reporting Burden:
Responses: 7,200.
Burden Hours: 8,000.

Fall Enrollment (Age data)

Reporting Burden:
Responses: 7,200.
Burden Hours: 8,200.

Occupationally Specific Enrollment

Reporting Burden:
Responses: 5,200.
Burden Hours: 9,600.

Completions (R/E)

Reporting Burden:
Responses: 7,200.
Burden Hours: 16,000.

Finance

Reporting Burden:
Responses: 7,200.
Burden Hours: 20,800.

Salary

Reporting Burden:
Responses: 7,200.
Burden Hours: 11,200.

Staff

Reporting Burden:
Responses: 300.
Burden Hours: 4,400.

BILLING CODE 4000-01-M

Descriptions of IPEDS Survey Data Uses

Institutional Activity: This survey provides the data needed to produce the estimated number of full-time equivalent (FTE) students in postsecondary education institutions. These data are used extensively by the Department of Education and institutional researchers. For example, it is used a) to determine funding allocations to institutions; b) for statistical projections of financial aid costs; c) as a measure of participation in postseconday education; and d) as a measure of institutional size. The data are extremely valuable for survey research design, statistical analyses, and general information purposes.

Staff: This survey, done in cooperation with the Equal Employment Opportunity Commission, collects data to obtain a comprehensive picture of staff in institutions of postsecondary education by their full-time or part-time status and by the type of work they do. These data will provide insights into the use of full-time and part-time faculty and staff in postsecondary education. It will also allow comparisons of staffing patterns by institutional type and control and will permit analysis of the relationship between financial and staff resources.

Completions: Completions data constitute the only national source of information on the availability and location of highly trained manpower. Information on completers of postsecondary education programs is used extensively by Federal and State government agencies for manpower planning; by business and industry and other groups for recruiting purposes; and by researchers and others to study manpower supply and demand.

Fall Enrollment: Fall enrollment data traditionally are used to measure student access to postsecondary education and this survey will continue to supplement this important statistical series. The Department also uses fall enrollment data in program planning and for setting funding allocations standards for legislatively controlled programs. Other Federal and State agencies use enrollment data in policymaking decisions, economic and financial planning, manpower forecasting, and policy formulation.

Salaries of Full-time Instructional Faculty: These data are used by postsecondary institutions to establish competitive compensation packages; by State agencies to determine budgets for State-supported institutions and to make comparative studies with other States; by Federal agencies to analyze the teaching profession as a whole, to contribute to occupational forecasting, and to develop financial indicators relating to postsecondary education; and by professional and educational associations to evaluate the differences in salaries between men and women, and the general status of the profession.

Finance: The purpose of this survey is to provide basic data which describe the financial condition of postsecondary education in the nation; to monitor changes in postsecondary education finance; and to promote research involving institutional financial resources and expenditures. Data will be summarized by various institutional categories to detect any changes over the years in the sources of revenues and types of expenditures. Results will allow institutions to compare their financial status to national averages. The data will also be merged with other institutional data, such as enrollment and completions, to provide a valuable national resource for institutional research.

Institutional Characteristics: The primary purpose of this survey is to collect the basic data that identify and describe the universe of

postsecondary education institutions in the United States and its outlying areas. Results will be used as the source file for sample design and selection for the other IPEDS surveys and other data collection activities involving postsecondary education institutions. Other uses include generating basic counts of institutions in each State by type, control and other key institutional characteristics; compiling directories of postsecondary institutions that will be made available to the general public; and incorporating results into Career Information Delivery Systems throughout the Nation.

DRAFT

[FR Doc. 89-9438 Filed 4-19-89; 8:45 am]
BILLING CODE 4000-01-C

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Office of Information Resources Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before May 22, 1989.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Jim Houser, Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., Room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Margaret B. Webster, Department of Education, 400 Maryland Avenue, SW., Room 6524, Regional Office Building 3, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Margaret B. Webster (202) 732-3915.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State of Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Director, Office of Information Resources Management, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) title; (3) frequency of collection; (4) the affected public; (5) reporting burden; and/or (6) recordkeeping burden; and (7) abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Margaret Wester at the address specified above.

Dated: April 14, 1989.

George P. Sotos,

Acting Director for Office of Information Resources Management.

Office of Special Education and Rehabilitative Services

Type of Review: Extension.
Title: Application for Training Personnel for the Education of the Handicapped.
Frequency: Annually.
Affected Public: State or local government, Non-profit institutions.
Reporting Burden:
Responses: 815.
Burden Hours: 815.
Recordkeeping Burden:
Recordkeepers: 0.
Burden Hours: 0.
Abstract: This form will be used by State agencies and other institutions to apply for funding under the Training Personnel for Education of the Handicapped Program. The Department uses the information to make grant awards.

Office of Special Education and Rehabilitative Services

Type of Review: Revision.
Title: Number of Personnel Employed to Provide Special Education and Related Services to Handicapped Children and Youth.
Frequency: Annually.
Affected Public: State and local government.
Reporting Burden:
Responses: 58.
Burden Hours: 13,978.
Recordkeeping Burden:
Recordkeepers: 0.
Burden Hours: 0
Abstract: This form will be used by States to report the number of personnel that are employed to provide educational services to handicapped children and youth. This information will be used by the Department to monitor States to ensure compliance with Federal statute and regulations and to respond to Congressional reporting requirements.

Office of Special Education and Rehabilitative Services

Type of Review: Revision.
Title: Additional Personnel Needed to Provide Special Education and Related Services to Handicapped Children and Youth.
Frequency: Annually.
Affected Public: State or local governments.
Reporting Burden:
Responses: 58.
Burden Hours: 7,018.
Recordkeeping Burden:
Recordkeepers: 0.
Burden Hours: 0.
Abstract: This form will be used to assess the adequacy of personnel to provide services to handicapped children and youth. This information will be used by the Department to monitor States to ensure compliance with Federal statute and regulations, and to respond to Congressional reporting requirements.

Office of Postsecondary Education

Type of Review: Extension.
Title: Certification Form for the Endowment Challenge Grant Program.
Frequency: Annually.
Affected Public: Non-profit institutions.
Reporting Burden:
Responses: 50.
Burden Hours: 25.
Recordkeeping Burden:
Recordkeepers: 0.
Burden Hours: 0.
Abstract: The institutions of Higher Education that have participated in the Endowment Grant Program submit these reports to the Department. The Department uses the information to assess the accomplishments of project goals and objectives and to aid in the effective program management.

Office of Educational Research and Improvement

Type of Review: Extension.
Title: Applications for Grants Under Library Research and Demonstration Program, title II-B of the Higher Education Act of 1965, as Amended.
Frequency: Annually.
Affected Public: State or local governments.
Reporting Burden:
Responses: 50.
Burden Hours: 1,800.
Recordkeeping Burden:
Recordkeepers: 0.
Burden Hours: C.
Abstract: This application will be used by institutions of higher education and library organizations to apply for funds under Title II-B of the Higher Education Act, as amended. Funds are available for research and development activities to improve libraries and information technology and for training in librarianship.

Office of Educational Research and Improvement

Type of Review: Revision.
Title: 1990 National Postsecondary Student Aid Study.
Frequency: Triennial.
Affected Public: Individuals or households; Non-profit institutions.

Reporting Burden:
Responses: 5650.
Burden Hours: 4803.
Recordkeeping Burden:
Recordkeepers: 0.
Burden Hours: 0.

Abstract: This study will collect data from a sample of students in postsecondary institutions, their parents and their school financial aid records. It will provide a student-based information system for student financial aid. It will assess the distribution and use of financial aid and address important issues in this area.

[FR Doc. 89-9439 Filed 4-19-89; 8:45 am]
BILLING CODE 4000-01-M

[CFDA 84.060A]

Indian Education Program; Formula Grants; Local Educational Agencies

AGENCY: Department of Education.

ACTION: Notice of extension of closing date for transmittal of applications for new awards for Fiscal Year 1989 assistance under the Formula Grant Program, Indian Education Act of 1988, Subpart 1 (formerly Part A).

This notice extends the closing date of May 1, 1989, to May 15, 1989, for the transmittal of applications for new awards under the Formula Grant Program. The application notice for this program, published in the **Federal Register** on March 15, 1989 (54 FR 10696), provides detailed information concerning this program. Application packages were to have been available March 17, 1989. The packages were not available, however, until April 3, 1989. The extension of the closing date to May 15, 1989 will provide applicants sufficient time to prepare applications.

FOR FURTHER INFORMATION CONTACT: Inquiries concerning this extension should be addressed to Julia Lesceux, U.S. Department of Education, 400 Maryland Avenue, SW., Room 2177, Washington, DC 20202-6335. Telephone: (202) 732-5146.

(25 U.S.C. 2601-2606, 2651)

Dated: April 13, 1989.

Daniel F. Bonner,

Acting Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 89-9440 Filed 4-19-89; 8:45 am]
BILLING CODE 4000-01-M

National Assessment Governing Board; Meeting

AGENCY: National Assessment Governing Board.

ACTION: Notice of partially closed meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the National Assessment Governing Board. This notice also describes the functions of the Board. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend.

DATES: May 12 and 13, 1989.

ADDRESS: Omni Shoreham Hotel, 2500 Calvert Street NW., Washington, DC 20008.

FOR FURTHER INFORMATION CONTACT: Eunice E. Henderson, Designated Federal Official, Office of Assistant Secretary for Educational Research, and Improvement, U.S. Department of Education, 555 New Jersey Avenue NW., Room 602C, Washington, DC 20208, telephone: (202) 357-6050.

SUPPLEMENTARY INFORMATION: The National Assessment Governing Board is established under section 406(i) of the General Education Provisions Act (GEPA) as amended by section 3403 of the National Assessment of Eductional Progress Improvement Act (NAEP Improvement Act), Title III-C of the Augustus F. Hawkins—Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988 (Pub. L. 100-297); 20 USC 1221e-1).

The Board is established to advise the Commissioner of the National Center for Education Statistics on policies and actions needed to improve the form and use of the National Assessment of Educational Progress, and develop specifications for the design, methodology, analysis and reporting of test results. The Board also is responsible for selecting subject areas to be assessed, identifying the objectives for each age and grade tested, and establishing standards and procedures for interstate and national comparisons.

The National Assessment Governing Board will meet in Washington, DC, on May 12 and 13, 1989. The Board will meet from 9:00 a.m. until the completion of business on May 12, 1989 and from 8:30 a.m. to 2:00 p.m. on May 13, 1989. The proposed agenda includes introduction of the Board's newly appointed Executive Staff Director, meetings of the Board's committees, briefings on issues related to the conduct of the National Assessment of Educational Progress (NAEP), a review of the bylaws of the Board, Board committee reports, and a discussion on the process to be used in identifying appropriate achievement goals for NAEP assessments.

A portion of the meeting will be closed to the public. On May 12, 1989, the Board will meet in closed session beginning at 12:15 p.m. until 2:00 p.m. During the closed session, the Board will discuss its organizational structure, staffing and operations. This segment of the meeting will be devoted to consideration by the Board of qualifications of specific individuals for positions on the Board's staff. Discussion will touch on matters that would disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy if conducted in open session and will relate solely to the internal personnel rules and practices of an agency. Such matters are protected by exemptions (2) and (6) of section 552b (c) of Title 5 U.S.C. The Board also will discuss and review NAEP policy matters on which the Board's advice is needed. The discussion will involve privileged information that cannot be discussed in open session. Matters to be discussed include those for which premature disclosure would significantly frustrate implementation of a proposed agency action. Such matters are protected by exemption (9)(b) of section 552b (c) of Title 5 U.S.C. A summary of the activities at the closed session and related matters which are informative to the public consistent with the policy of Title 5 U.S.C. 552b will be available to the public within 14 days following the meeting.

Records are kept of all Board proceedings and, until a permanent office site for the Board has been established, are available for public inspection at the U.S. Department of Education, Office of Educational Research and Improvement, Room 600, 555 New Jersey Avenue NW., Washington, DC, Monday through Friday from 8:30 a.m. to 5:00 p.m.

Dated: April 17, 1989.

Bruno V. Manno,

Assistant Secretary for Educational Research and Improvement (Acting).

[FR Doc. 89-9500 Filed 4-19-89; 8:45 am]
BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Voluntary Agreement and Plan of Action To Implement the International Energy Program; Meeting

In accordance with section 252(c)(1)(A)(i) of the Energy Policy and Conservation Act (42 U.S.C.

6272(c)(1)(A)(i)), the following meeting notice is provided:

A meeting of the Industry Advisory Board (IAB) to the International Energy Agency (IEA) will be held on Thursday, April 27, 1989, at the offices of the IEA, 2, rue Andre Pascal, Paris, France, beginning at 10:00 a.m. The purpose of this meeting is to permit attendance by representatives of U.S. company members of the IAB at a meeting of representatives of Participating Countries which is scheduled to be held at the aforesaid location on April 27 for the purpose of advising the IEA Secretariat in its preparation for a workshop on the subject of "Practical Aspects of Stockholding and Stockdraw." The principal participants at the meeting are expected to be representatives of Participating Countries. Additional participants are expected to be representatives of the IEA Secretariat and representatives of a small number of members of the IAB. The agenda for the meeting is under the control of the Secretariat. It is expected that the agenda will cover the following items:

1. Introductory remarks.
2. Draft agenda for Workshop on Practical Aspects of Stockholding and Stockdraw.
3. Any other business.

As provided in section 252(c)(1)(A)(ii) of the Energy Policy and Conservation Act, the meeting is open only to representatives of members of the IAB, their counsel, representatives of members of the IEA's Standing Group on Emergency Questions (SEQ), representatives of the Departments of Energy, Justice, State, the Federal Trade Commission, and the General Accounting Office, representatives of Committees of the Congress, representatives of the IEA, representatives of the Commission of the European Communities, and invitees of the IAB, the SEQ, or the IEA.

Issued in Washington, DC, April 14, 1989.

Eric J. Fygi,

Acting General Counsel.

FR Doc. 89-9408 Filed 4-19-89; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. QF87-452-001 et al.]

Wheelabrator Northampton Energy Company, Inc., et al., Electric Rate, Small Power Production, and Interlocking Directorate Filings

April 14, 1989.

Take notice that the following filings have been made with the Commission:

1. Wheelbrator Northampton Energy Company, Inc.

[Docket No. QF87-452-001]

On March 31, 1989, Wheelabrator Northampton Energy Company, Inc. (Applicant), of 55 Ferncroft Road, Danvers, Massachusetts 01923, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in the Borough of Northampton, Northampton County, Pennsylvania. The facility will consist of two circulating fluidized bed combustion boilers and an extraction/condensing steam turbine generator. Thermal energy recovered from the facility will be used for space heating and in the production of commercial-grade liner board. The electric power production capacity of the facility will be 84.1 MW. The primary source of energy will be anthracite culm. Construction of the facility is scheduled to begin in September 1989.

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

2. Utah Power & Light Company

[Docket No. ER89-325-000]

Take notice that on April 5, 1989, Utah Power & Light Company (Utah) tendered for filing an Interconnected Operation Agreement between Utah Municipal Power Agency and Utah Power & Light Company. The purpose of the Agreement is to supplement, consolidate, and to coordinate in and through UMPA services already being provided under existing agreements.

Utah requests that the notice requirements be waived, and that the Agreement be made effective retroactively as of November 1, 1988, the date service was commenced.

Copies of this filing were served on Utah Municipal Power Agency, the Towns of Levan and Nephi, Utah, and the Utah Public Service Commission.

Comment date: May 1, 1989, in accordance with Standard Paragraph E at the end of this notice.

3. Southwestern Electric Power Company

[Docket No. ER89-319-000]

Take notice that on March 31, 1989, Southwestern Electric Power Company (SWEPCO) tendered for filing for information purposes, the estimated return on common equity—11.08%—which will be used to calculate estimated formula rates for wholesale service in the 1989 Contract Year to Northeast Texas Electric Cooperative, Inc. (NTEC), FERC Rate Schedule No. 84; the City of Bentonville, Arkansas (Bentonville), FERC Rate Schedule No. 69; the City of Hope Arkansas (Hope), FERC Rate Schedule No. 86; the Oklahoma Municipal Power Authority (OMPA), FERC Rate Schedule No. 95; Rayburn County Electric Cooperative, Inc. (Rayburn), FERC Rate Schedule No. 99; Cajun Electric Power Cooperative, Inc. (Cajun), FERC Rate Schedule No. 100; and TEX-LA Electric Cooperative of Texas, Inc. (TEX-LA), FERC Rate Schedule No. 104.

Comment date: May 1, 1989, in accordance with Standard Paragraph E at the end of this notice.

4. Kansas Power and Light Company

[Docket No. ER89-321-000]

Take notice that on April 3, 1989, the Kansas Power and Light Company (KPL) tendered for filing a proposed change in its Federal Energy Regulatory Commission Electric Service Tariff No. 247. The revised Exhibit A sets forth Nominated Capacities for transmission, distribution and dispatch services for the contract year beginning June 1, 1989 and for the four subsequent contract years, pursuant to Article IV, sections 4.2 and 4.3 of FERC Service Tariff No. 247. The revised Exhibit B sets forth Kansas Electric Power Cooperative's (KEPCo's) most recent load forecast submitted to KPL pursuant to Article III, section 3.1 of FERC Service Tariff No. 247.

Copies of the filing were served upon Kansas Electric Power Cooperative, Inc. and the Kansas Corporation Commission.

Comment date: May 1, 1989, in accordance with Standard Paragraph E at the end of this notice.

5. New York State Electric & Gas Corporation

[Docket No. ER89-322-000]

Take notice that New York State Electric & Gas Corporation (NYSEG) on April 3, 1989 tendered for filing a Notice of Cancellation of its FERC Electric Rate Schedule Nos. 94 and 95 short-term contracts between NYSEG and Rochester Gas and Electric Corporation (RG&E) for supply of power from NYSEG to RG&E's Ginna nuclear power plant.

NYSEG states that as the contracts have already expired by their own terms. NYSEG has asked for a waiver of the 60 day notice requirement. This is an

administrative filing having no effect on service rendered by NYSEG.

NYSEG states that the subject rate schedules consists of an agreement between NYSEG and Rochester Gas and Electric Corporation, providing for NYSEG to sell electric energy during a scheduled outage of RG&E's Ginna nuclear power plant.

A copy of the appropriate notice of cancellation was served upon Rochester Gas and Electric Corporation.

Comment date: May 1, 1989, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-9533 Filed 4-19-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ER89-312-000 et al.]

Vermont Yankee Nuclear, Power Corp. et al.; Electric rate, Small power production, and Interlocking Directorate Filings

April 13, 1989.

Take notice that the following filings have been made with the Commission:

1. Vermont Yankee Nuclear

[Docket No. ER89-312-000]

Take notice that on March 31, 1989, Vermont Yankee Nuclear Power Corporation (Vermont Yankee) tendered for filing, an amendment to the Power Contracts under which the Company sells electricity for resale to nine England Utilities. Vermont Yankee states that the rate change proposed would result in an increase in Vermont Yankee's 1990 revenue requirment of approximately $9.4 million. Vermont Yankee is also submitting an alternative proposal that would reduce the 1990 increase to approximately $7.6 million.

Vermont Yankee states that copies of its filing have been provided to its customers and to state regulatory authorities to Vermont, New Hampshire, Maine, Massachusetts, Connecticut and Rhode Island.

Comment date: April 28, 1989, in accordance with Standard Paragraph E at the end of this notice.

Northern Indiana Public Service

[Docket No. ER89-311-000]

Take notice that on March 31, 1989, Northern Indiana Public Service Company (Northern Indiana) tendered for filing Amendment No. 3 dated March 31, 1989 to the Operating Agreement dated May 1, 1979 among Consumers Power Company, The Operating Agreement is designated as Northern Indiana Rate Schedule FERC No. 11.

Northern Indiana states that Amendment No. 3 modifies the provisions of the current Rate Schedule by deleting Service Schedule D (Conservation Energy) modifying Service Schedule C (Economy Energy) by changing its title to Interchange Power and adding a Non-Displacement Energy Section, and increasing rates established for Emergency Service, Short-Term Capacity and Energy and Interchange Power, as set forth in Service Schedules A, B, and C, respectively.

The proposed effective date of amendment No. 3 shall be March 31, 1989, if waiver of the notice requirements is granted by the Commission.

Northern Indiana respectively requests waiver of any Commission requirements not addressed by the filing as it is being made pursuant to a mutual agreement of the parties.

Copies of this filing have been served upon Consumers Power Company, the Detroit Edison Company, the Michigan Public Service Commission, and the Indiana Utility Regulatory Commission.

Comment date: April 28, 1989, in accordance with Standard Paragraph E at the end of this notice.

3. Kansas City Power & Light Company

[Docket No. ER89-323-000]

Take notice that on April 5, 1989, Kansas City Power & Light Company (KCPL) tendered for filing a Municipal Participation Agreement dated March 6, 1989 between KCPL and the City of Gardner, Kansas (City), to become effective as of June 1, 1990. This Agreement provides for the initial rates and charges for certain wholesale service by KCPL to the City.

Under the Municipal Participation Agreement, KCPL will coordinate with and share in the generation of Generating Units which the City will install and own. in addition, KCPL will provide Firm Power Service System Participation Power, Reserve Capacity Deficiency make-up and Standby Service to the City. The rates included in these schedules are KCPL's rates and charges for similar service under schedules previously filed by KCPL with the Federal Energy Regulatory Commission. By separate filing, the Company will be filing a Load Regulation and Displacement Energy Service Schedule which will also be made available to the City under the Agreement.

Copies of the filing were served upon KCPL's jurisdictional customer, as well as the Missouri Public Service Commission and the State Corporation Commission of the State of Kansas.

Comment date: April 28, 1989, in accordance with Standard Paragraph E at the end of this notice.

4. Northeast Utilities Service Company

[Docket No. ER89-320-000]

Take notice that on April 4, 1989, Northeast Utilities Service Company (NUSCO) tendered for filing proposed rate schedules pertaining to (i) a Purchase Agreement with Respect to Various Gas Turbine Units, dated May 1, 1987 (Gas Turbine Agreement), (ii) a Letter Agreement dated February 17, 1989 (PSNH Letter Agreement), (iii) a Letter Agreement dated March 10, 1989 (NEP Letter Agreement), and (iv) a Transmission Service Agreement dated November 1, 1988, between NUSCO, as Agent for the Connecticut Light and Power Company (CL&P) and Western Massachusetts Electric Company (WMECO), and Public Service Company of New Hampshire (PSNH) and New England Power Company (NEP).

NUSCO requests that the Commission waiver its notice filing regulations to the extent necessary to permit (i) the Gas Turbine Agreement to commence effective May 1, 1987 and to terminate effective April 30, 1988; (ii) the PSNH Letter Agreement to commence effective November 1, 1987 and to terminate effective September 30, 1988; (iii) to NEP Letter Agreement to commence effective November 1, 1987 and to terminate effective April 30, 1988; and (iv) the Transmission Service Agreement to commence effective November 1, 1988.

NUSCO states that a copy of the rate schedules have been mailed or delivered to CL&P and WMECO, and to PSNH and NEP.

Comment date: April 28, 1989, in accordance with Standard Paragraph E at the end of this notice.

5. Mississippi Power Company

[Docket No. ER89-318-000]

Take notice that on March 31, 1989, Mississippi Power Company tendered for filing a rate schedule change for the transmission services provided pursuant to the contract dated January 29, 1985 between Mississippi Power Company and the Southeastern Power Administration, acting on behalf of the United States of America, Department of Energy. The rate schedule change provides for a decrease (from 15 percent to 14 percent) in the return on common equity component of the formulary rate for transmission services incorporated in the contract.

Comment date: April 28, 1989, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs:

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-9429 Filed 4-19-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP89-1176-000 et al.]

Natural Gas Pipeline Co. of America et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. Natural Gas Pipeline Company of America

[Docket No. CP89-1176-000]

April 12, 1989.

Take notice that on April 10, 1989, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP89-1176-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of TXG Gas Marketing Company (TXG), a natural gas marketer, under its blanket authorization issued in Docket No. CP86-582-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Natural would perform the proposed interruptible transportation service for TXG, pursuant to an interruptible transportation service agreement dated October 21, 1988 (#IGP-1538). The transportation agreement is effective for a primary term ending February 1, 1989, and shall continue month to month thereafter unless terminated by five days prior notice by either party. Natural proposes to transport up to a maximum of 480,0000 MMBtu of natural gas per day (plus any additional volumes accepted pursuant to the overrun provisions of Natural's Rate Schedule ITS); on an average day up to 100,000 MMBtu; and based on the average day figure, 36,500,000 MMBtu annually of natural gas for TXG. Natural proposes to receive the subject gas at various points located in Offshore Louisiana, Texas and Offshore Texas and the delivery points are located in Louisiana. Natural avers that no new facilities are required to provide the proposed service.

It is explained that the proposed service is currently being performed pursuant to the 120-day self implementing provision of Section 284.223(a)(1) of the Commission's Regulations. Natural commenced such self-implementing service on February 8, 1989, as reported in Docket No. ST89-2994-000.

Comment date: May 30, 1989, in accordance with Standard Paragraph G at the end of this notice.

2. Northwest Pipeline Corporation

[Docket No. CP89-1192-000]

April 13, 1989.

Take notice that on April 11, 1989, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84108, filed in Docket No. CP89-1192-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) and the Natural Gas Policy Act (18 CFR 284.223) for authorization to transport natural gas for Columbus Gas Services, Inc. (Columbus), a producer of natural gas, under Northwest's blanket certificate issued in Docket No. CP86-578-000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northwest proposes to transport, on an interruptible basis, up to 12,000 MMBtu of natural gas equivalent per day for Columbus pursuant to a gas transportation agreement dated April 1, 1987, as amended on February 1, 1988, May 13, 1988, June 15, 1988, June 24, 1988, October 14, 1988 and February 24, 1989, between Northwest and Columbus. Northwest would receive the gas at gas wells in San Juan and Rio Arriba Counties, New Mexico and redeliver equivalent volumes, less fuel and lost and unaccounted for volumes, to the Ignacio delivery point and the Ignacio Plant Outlet in La Plata County, Colorado and the LaJara interconnect with El Paso Natural Gas Company in Rio Arriba County, New Mexico.

Northwest further states that the estimated average daily and annual quantities would be 4000 MMBtu and 1,500,000 MMBtu, respectively. Service under § 284.223(a) commenced on February 24, 1989, as reported in Docket No. ST89-2869-000, it is stated.

Comment date: May 30, 1989 in accordance with Standard Paragraph G at the end of the notice.

3. Northwest Pipeline Corporation

[Docket No. CP89-1191-000]

April 13, 1989.

Take notice that on April 11, 1989, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84108, filed in Docket No. CP89-1191-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) and the Natural Gas Policy Act (18 CFR 284.223) for authorization to transport natural gas for Enron Oil and Gas Company (Enron), a producer of natural gas, under Northwest's blanket certificate issued in Docket No. CP86-578-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northwest proposes to transport, on an interruptible basis up to 185,000 MMBtu of natural gas equivalent per day for Enron pursuant to a gas transportation agreement dated March 30, 1989, as amended on March 30, 1989, between Northwest and Enron. Northwest would receive the gas at gas wells in Sublette and Lincoln Counties, Wyoming and the Mickleson-Ote Creek Control Meter in Sublette County,

Wyoming and redeliver equivalent volumes, less fuel and lost and unaccounted for volumes, to the Opal Plant delivery point in Lincoln County, Wyoming.

Northwest further states that the estimated average daily and annual quantities would be 75,000 MMBtu and 27,000,000 MMBtu, respectively. Service under § 284.223(a) commenced on February 1, 1989, as reported in Docket No. ST89–2956–000, it is stated.

Comment date: May 30, 1989, in accordance with Standard Paragraph G at the end of this notice.

4. Texas Gas Transmission Corporation

[Docket No. CP89–1167–000]

April 13, 1989.

Take notice that on April 7, 1989, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP89–1167–000, a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act, for authorization to transport natural gas under its blanket certificate issued in Docket No. CP868–686–000 pursuant to Section 7 of the Natural Gas Act for the Polaris Pipeline Corporation (Polaris), as more fully set forth in the request on file with the Commission and open to public inspection.

Texas Gas proposes to transport up to a maximum daily quantity of 100,000 MMBtu, average daily volume of 20,000 MMBtu and an annual volume of 6,000,000 MMBtu for Polaris through use of Texas Gas' existing facilities.

Texas Gas explains that service commenced February 15, 1989, under Section 248.223(a) of the Commission's regulations, as reported in Docket No. ST89–2345–000.

Comment date: May 30, 1989, in accordance with Standard Paragraph G at the end of this notice.

5. Northwest Pipeline Corporation

[Docket No. CP89–1193–000]

April 13, 1989.

Take notice that on April 11, 1989, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84108, filed in Docket No. CP89–1193–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations for authorization to transport natural gas for the account of National Cooperative Refinery Association (NCRA), a producer of natural gas, under Northwest's blanket certificate issued in Docket No. CP86–578–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northwest proposes to transport on an interruptible basis up to 8,000 MMBtu of natural gas on a peak day, 1,000 MMBtu on an average day and 365,000 MMBtu on an annual basis for NCRA. Northwest states that it would perform the transportation service for NCRA under Northwest's Rate Schedule TI–1 for a primary term of 30 days and continue on a monthly basis thereafter, subject to termination upon 30 days notice. Northwest indicates that it would transport the gas from wells located in La Plata County, Colorado to the Ignacio delivery point and the Ignacio Plant Outlet located in La Plata County, Colorado and to the existing LaJara interconnect with El Paso Natural Gas Company is Rio Arriba County, New Mexico.

It is explained that the service has commenced February 1, 1989, under the automatic authorization provisions of § 284.223 of the Commission's Regulations, as reported in Docket No. ST89–2871. Northwest indicates that no new facilities would be necessary to provide the subject service.

Comment date: May 30, 1989, in accordance with Standard Paragraph G at the end of this notice.

6. Northern Natural Gas Company

[Docket No. CP89–1173–000]

April 13, 1989.

Take notice that on April 7, 1989, Northern Natural Gas Company (Northern), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251–1188, filed in Docket No. CP89–1173–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on an interruptible basis on behalf of Devon Energy Corporation (Devon), a producer of natural gas, under its blanket certificate issued in Docket No. CP86–435–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Northern states that it proposes to transport natural gas on behalf of Devon between several points of receipt in Texas and Oklahoma, and several points of delivery in Texas, Iowa, Illinois, Kansas and Oklahoma.

Northern states that the maximum daily, average daily and annual quantities that it would transport on behalf of Devon would be 5,800 MMBtu equivalent of natural gas, 4,350 MMBtu equivalent of natural gas and 2,117,000 MMBtu equivalent of natural gas, respectively.

Northern indicates that in Docket No. ST89–2753, filed with the Commission on March 21, 1989, it reported that transportation service on behalf of Devon had begun under the 120-day automatic authorization provisions of § 284.223(a).

Comment date: May 30, 1989, in accordance with Standard Paragraph G at the end of this notice.

7. Paiute Pipeline Company

[Docket No. CP89–1177–000]

April 13, 1989.

Take notice that on April 10, 1989, Paiute Pipeline Company (Paiute), P.O. Box 94197, Las Vegas, Nevada 89193–4197, filed in Docket No. CP89–1177–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas for CP National Corporation (CP National), under its blanket certificate issued in Docket No. CP87–309–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Paiute proposes to transport for CP National on an interruptible basis up to 15,300 MMBtu of natural gas on a peak day, 4,658 MMBtu on an average day, and 1,700,000 MMBtu on an annual basis. It is stated that service under § 284.223(a) commenced January 22, 1989, as reported in Docket No. ST89–2283. Paiute indicates that the service would be provided pursuant to a Transportation Service Agreement dated November 14, 1988 under Paiute's Rate Schedule IT–1. It is stated that the service would have a primary term continuing through October 31, 1991 and would continue on a monthly basis thereafter. No new facilities are proposed herein.

Comment date: May 30, 1989, in accordance with Standard Paragraph G at the end of this notice.

8. Colorado Interstate Gas Company

[Docket No. CP89–1169–000]

April 13, 1989.

Take notice that on April 7, 1989, Colorado Interstate Gas Company (CIG), Post Office Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP89–1169–000 a request pursuant to § 157.205 of the Commission's Regulations (18 CFR 157.205) for authorization to transport natural gas on behalf of Fuel Resources Development Company (Fuel Resources), a marketer of natural gas, under CIG's blanket certificate issued in Docket No. CP89–589–000, pursuant to section 7 of the

Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

CIG proposes to transport on an interruptible basis up to 50,000 Mcf of natural gas on a peak day, 25,000 Mcf on an average day and 9.1 Bcf on an annual basis for Fuel Resources. It is stated that CIG would receive the gas for Fuel Resources' account at existing points on CIG's system in Wyoming and Texas and would deliver equivalent volumes of gas at existing points on CIG's system in Wyoming. It is asserted that the transportation service would be effected using existing facilities and would require no construction of additional facilities. It is explained that the transportation service commenced February 13, 1989, under the automatic authorization provisions of § 284.223 of the Commission's Regulations, as reported in Docket No. ST89-2618.

Comment date: May 30, 1989, in accordance with Standard Paragraph G at the end of this notice.

9. United Gas Pipe Line Company

[Docket No. CP89-1171-000]

April 13, 1989.

Take notice that on April 7, 1989, United Gas Pipe Line Company (United), P.O Box 1478, Houston, Texas 77152-1478, filed in Docket No. CP89-1171-000 an application pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Loutex Energy, Inc. (Loutex), a producer and marketer of natural gas, under United's blanket certificate issued in Docket No. CP88-6-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

United proposes to transport, on an interruptible basis, up to 480,236 MMBtu per day for Loutex. United states that construction of facilities would not be required to provide the proposed service.

United further states that the maximum day, average day, and annual transportation volumes would be approximately 480,236 MMBtu, 480,236 MMBtu and 175,286,140 MMBtu respectively.

United advises that service under § 284.223(a) commenced February 27, 1989, as reported in Docket No. ST89-2782.

Comment date: May 30, 1989, in accordance with Standard Paragraph G at the end of this notice.

10. Columbia Gulf Transmission

[Docket No. CP83-231-002]

April 13, 1989.

Take notice that on April 4, 1989, Columbia Gulf Transmission Company (Columbia Gulf), P.O. Box 683, Houston, Texas 77001, filed in Docket No. CP83-231-002 a petition to amend the order issued September 22, 1983, in Docket No. CP83-231-000 issuing a certificate of public convenience and necessity pursuant to section 7(c) of the Natural Gas Act so as to authorize a reduction in the contract demand volume to be transported for Northern Natural Gas Company, Division of Enron Corporation (Northern), from 60,000 Mcf to 35,000 dt equivalent of natural gas per day, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Columbia Gulf states that it was authorized by order issued September 22, 1983, in Docket No. CP83-231-000, to transport for Northern a contract demand quantity of 60,000 Mcf per day, less 2.05 percent for fuel usage and unaccounted-for losses incidental to the transportation service, and such additional quantities as Columbia Gulf agrees to accept from time to time, from its measurement facilities at the terminus of the Blue Water System Project near Egan, Acadia Parish, Louisiana, through its available capacity in its West Lateral pipeline facilities to its compressor station near Rayne, Acadia Parish, Louisiana, and, by displacement, to deliver thermally equivalent quantities for the account of Northern to United Gas Pipeline Company (United) at the terminus of United's jointly owned Sea Robin Pipe Line System located near Erath, Vermilion Parish, Louisiana. Pursuant to an amendment to the agreement dated September 22, 1988, Columbia Gulf requests authorization to reduce the presently authorized contract demand quantity from 60,000 Mcf per day to 35,000 dt equivalent of natural gas per day, effective September 22, 1988, and from year to year thereafter, unless the agreement is cancelled by either party giving one year's written notice to the other.

Comment date: May 4, 1989, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protect. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 89-9430 Filed 4-19-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP89-1140-000, et al.]

Southern Natural Gas Co., et al.; Natural Gas Certificate Filings

April 14, 1989.

Take notice that the following filings have been made with the Commission:

1. Southern Natural Gas Company

[Docket No. CP89-1140-000]

Take notice that on April 4, 1989, Southern Natural Gas Company (Southern), Post Office Box 2563, Birmingham, Alabama 35202-2563, filed in Docket No. CP89-1140-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on an interruptible basis for Total Minatome Corporation (Total) under the blanket certificate issued in Docket No. CP89-316-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Southern states that pursuant to a Transportation Agreement dated February 16, 1989, it proposes to transport up to 15,000 MMBtu per day of natural gas for Total under Rate Schedule IT, for a primary term of one month with successive terms of one month thereafter unless cancelled by either party.

Southern also states that the maximum day, average day, and annual transportation volumes would be approximately 15,000 MMBtu, 136 MMbtu and 50,000 MMbtu, respectively. Southern proposes to receive the gas at an interconnection with Texas Eastern Transmission Corporation in offshore Louisiana for delivery to a point in offshore Louisiana.

Southern further states it commenced their service February 22, 1989, as reported in Docket No. ST89-2703-000.

Comment Date: May 30, 1989, in accordance with Standard Paragraph G at the end of this notice.

2. Trunkline Gas Company

[Docket No. CP89-1157-000]

Take notice that on April 5, 1989, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP89-1157-000 an application pursuant to section 7(b) of the Natural Gas Act for an order granting permission and approval to abandon exchange services between Trunkline and Gulf Oil Corporation (Gulf) and Trunkline and Tennessee Gas Pipeline Company (Tennessee), all as more fully set forth in the application which is on file with the Commission.

Trunkline states that pursuant to Rate Schedules TE-2, E-21, and E-23 of Trunkline's FERC Gas Tariff, Original Volume No. 2, Trunkline currently exchanges 10,000 Mcf/d with Gulf, 70,000 Mcf/d with Gulf and 5,000 Mcf/d with Tennessee, respectively. Trunkline further states that the contractual terms of all three exchange agreements have expired, which has prompted Trunkline to request an order authorizing the abandonment of Rate Schedules TE-2, E-21, and E-23. Trunkline indicates that there would be no abandonment of any facilities.

Comment date: May 30, 1989, in accordance with Standard Paragarph G at the end of this notice.

3. United Gas Pipe Line Company

[Docket No. CP89-1175-000]

Take notice that on April 10, 1989, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP89-1175-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to provide an interruptible transportation service on behalf of Loutex Energy, Inc. (Loutex), a producer and marketer, under its blanket certificate issued in Docket No. CP88-6-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

United states that it proposes to transport natural gas on behalf of Loutex from points of receipt located in Louisiana to a point of delivery located in Louisiana.

United further states that the maximum daily, average daily and annual quantities that it would transport on behalf of Loutex would be 20,600 MMBtu equivalent, 20,600 MMBtu equivalent and 7,519,000 MMBtu equivalent of natural gas, respectively.

United indicates that in Docket No. ST89-2819, filed with the Commission on March 28, 1989, it reported that transportation service for Loutax had begun under the 120-day automatic authorization provisions of § 284.223(a).

Comment date: May 30, 1989, in accordance with Standard Paragraph G at the end of this notice.

4. Colorado Interstate Gas Company

[Docket No. CP89-1186-000]

Take notice that on April 10, 1989, Colorado Interstate Gas Company (CIG). P.O. Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP89-1186-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Santa Fe Gas Marketing (Santa Fe), a marketer, under the blanket certificate issued in Docket No. CP86-589, *et al.*, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

CIG states that pursuant to a transportation agreement dated March 1, 1989, under its Rate Schedule TI-1, it proposes to transport up to 50,000 Mcf per day of natural gas for Santa Fe. CIG states that it would transport the gas from multiple receipt points on its system in Wyoming, Oklahoma and Kansas, and would redeliver the gas, for less fuel gas and lost and unaccounted-for gas, for the account of Santa Fe in Moore County, Texas.

CIG advises that service under § 284.223(a) commenced March 1, 1989, as reported in Docket No. ST89-2785-000. CIG further advises that it would transport 25,000 Mcf on an average day and 9.1 Bcf annually.

Comment date: May 30, 1989 in accordance with Standard Paragraph G at the end of the notice.

5. Trunkline Gas Company

[Docket No. CP89-1185-000]

Take notice that on April 10, 1989, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP89-1185-000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to provide transportation service on behalf of Anadarko Trading Company (Anadarko), a shipper and marketer of natural gas, under its blanket certificate issued in Docket No. CP86-586-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Trunkline requests authorization to transport, on an interruptible basis, up to a maximum of 80,000 dt of natural gas per day for Anadarko from receipt points located in the states of Illinois, Louisiana, Tennessee and Texas. Trunkline will then transport and redeliver the gas to Southern Natural (Shadyside) in St. Mary Parish, Louisiana. The transportation agreement dated February 28, 1989 (Contract No. T-PLT-1445), has a primary term of one month and shall continue in effect month-to-month thereafter until terminated by either party upon at least 30 days written notice. Trunkline anticipates transporting, on an average

day 80,000 dt and an annual volume of 29,200,000 dt.

Trunkline states that the transportation of natural gas for Anadarko commenced March 2, 1989, as reported in Docket No. ST89-2910-000, for a 120-day period pursuant to § 284.223(a) of the Commission's Regulations.

Comment date: May 30, 1989, in accordance with Standard Paragraph G at the end of this notice.

6. Panhandle Eastern Pipe Line Company Trunkline Gas Company

[Docket No. CP89-1156-000]

Take notice that on April 5, 1989, Panhandle Eastern Pipe Line Company (Panhandle), and Trunkline Gas Company (Trunkline), collectively referred to as Applicants, both of, P.O. Box 1642, Houston, Texas 77001, filed in Docket No. CP89-1156-000 a joint applicant pursuant to section 7(b) of the Natural Gas Act, for an order permitting and approving abandonment of certain transportation and exchange services between Panhandle, Trunkline and Michigan Gas Utilities (MGU), all as more fully set forth in the application which is on file with the Federal Energy Regulatory Commission (Commission) and open for public inspection.

Panhandle and Trunkline state that the Transportation and Exchange Agreement (Agreement) covering these services expired October 31, 1988. It is further stated that the Agreement provided for MGU to designate up to 6,000 Mcf per day of its daily contract volume during the months of November through March, under its Gas Sales Contract with Panhandle for (1) transportation by Panhandle to Trunkline and (2) subsequent delivery by Trunkline to MGU at the existing Trunkline-MGU delivery point near White Pigeon, Michigan. It is explained that the delivery by Trunkline was accomplished through an exchange with Panhandle. It is asserted that services were provided under Panhandle's Rate Schedule TE-1 and Trunkline's Rate Schedule TE-3.

Comment date: May 5, 1989, in accordance with Standard Paragraph F at the end of this notice.

7. Tennessee Gas Pipeline Company

[Docket No. CP89-1187-000]

Take notice that on April 11, 1989, Tennessee Gas Pipeline Company, (Tennessee) P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP89-1187-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Summit Pipeline & Producing Company (Summit), under its blanket authorization issued in Docket No. CP87-115-000 pursaunt to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Tennessee would perform the proposed interruptible transportation service for Summit, a marketer of natural gas, pursuant to a transportation agreement dated November 18, 1988. The term of the transportation agreement is from the date of execution and shall remain in full force and effect for a term of one year and month to month thereafter, subject to termination upon 30 days prior written notice to the other party. Tennessee proposes to transport on a peak day up to 20,000 dekatherm; on an average day up to 20,000 dekatherm; and on an annual basis 7,300,000 dekatherm for Summit. Tennessee proposes to transport the subject gas from receipt points located in offshore Texas, offshore Louisiana, Texas, Mississippi, and Alabama, for redelivery to various delivery points off Tennessee's system. Tennessee avers that no new facilities are required to provide the proposed service.

It is explained that the proposed service is currently being performed pursuant to the 120-day self implementing provision of Section 284.223(a)(1) of the Commission's Regulations. Tennessee commenced such self-implementing service on March 3, 1989, as reported in Docket No. ST89-2916-000.

Comment date: May 30, 1989, in accordance with Standard Paragraph G at the end of this notice.

8. United Gas Pipe Line Company

[Docket No. CP89-1147-000]

Take notice that on April 5, 1989, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP89-1147-000 a request pursuant to §§ 157.205 and 284-223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 284.223) for authorization to provide an interruptible transportation service on behalf of Texaco Producing, Inc., a producer of natural gas, under United's blanket certificate issued in Docket No. CP88-6-000 pursuant to Section 7 of the Natural Gas act, all as more fully set forth in the request which is on file with the Commission and open for public inspection.

United proposes, pursuant to the gas transportation service agreement dated March 31, 1988, to transport a maximum daily quantity of 41,200 MMBtu equivalent of natural gas, an average daily quantity of 41,200 MMBtu equivalent of natural gas, and an annual quantity of 15,038,000 MMBtu equivalent of natural gas. United states that existing facilities will be used to provide the transportation service pursuant to that agreement. It is stated that the executed agreement contains the location of the receipt and delivery points in Exhibits A and B. United further states that service commenced on February 22, 1989, under the 120-day automatic provisions of § 284.223(a) of the Commission's Regulations, as reported in Docket ST89-2769.

Comment date: May 30, 1989, in accordance with Standard Paragraph G at the end of this notice

9. Northwest Pipeline Corporation

[Docket No. CP89-1190-000]

Take notice that on April 11, 1989, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84108, filed in Docket No. CP89-1190-000 an application pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Gold Fields Operating Company—Chimney Creek (Gold Fields), an end user of natural gas, under Northwest's blanket certificate issued in Docket No. CP86-578-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northwest proposes to transport, on an interruptible basis, up to 2,000 MMBtu per day for Gold Fields. Northwest states that construction of facilities would not be required to provide the proposed service.

Northwest further states that the maximum day, average day, and annual transportation volumes would be approximately 2,000 MMBtu, 1,000 MMBtu and 365,000 MMBtu respectively.

Northwest advises that service under § 284.223(a) commenced March 10, 1989, as reported in Docket No. ST89-2870.

Comment date: May 30, 1989, in accordance with Standard Paragraph G at the end of this notice.

10. United Gas Pipe Line Company

[Docket CP89-1170-000]

Take notice that on April 7, 1989, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, made a Prior Notice filing pursuant to §§ 157.205 and 284.223 in Docket No. CP89-1170-000, to provide interruptible transportation service on behalf of CITGO Petroleum Corporation, an end

user of natural gas, under United's blanket certificate issued in Docket No. CP88-6-000, all of more fully set forth in the request on file with the Commission and open to public inspection.

United states that the Interruptible Gas Transportation Agreement T1-21-1896, dated October 4, 1988, as amended on December 27, 1988, proposed to transport a maximum daily quantity of 25,750 MMBtu, and the service commenced December 27, 1988, as reported in Docket No. ST89-2737, pursuant to § 284.223(a) of the Commission's Regulations.

Comment date: May 30, 1989, in accordandce with Standard Paragraph G at the end of this notice.

11. United Gas Pipe Line Company

[Docket No. CP89-1168-000]

Take notice that on April 7, 1989, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP89-1168-000 a request pursuant to § 157.205 of the Commission's regulations for authorization to provide transportation service on behalf of Victoria Gas Corporation (Victoria Gas), a marketer of natural gas, under United's blanket certificate issued in Docket No. CP88-6-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

United requests authorization to transport, on an interruptible basis, up to a maximum of 103,000 MMBtu of natural gas per day for Victoria Gas from receipt points located in Texas, Mississippi, Louisiana and Alabama, to delivery points located in Mississippi, Louisiana, Florida and Texas. United anticipates transporting an annual volume of 37,595,000 MMBtu.

United states that the transportation of natural gas for Victoria Gas commenced February 24, 1989, as reported in Docket No. ST89-2781-000, for a 120-day period pursuant to Section 284.223(a) of the Commission's Regulations and the blanket certificate issued to United in Docket No. CP88-6-000.

Comment date: May 30, 1989, in accordance with Standared Paragraph G at the end of this notice.

12. ANR Pipeline company

[Docket N. CP89-1181-000]

Take notice that on March 24, 1989, ANR Pipeline Company (ANR) 500 Renaissance Center, Detroit, Michigan 48243 filed in Docket No. CP89-1181-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Enron Gas Marketing, Inc. (Enron), under the authorization issued in Docket No. CP88-532-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Comnmission and open to public inspection.

ANA would perform the proposed interruptible transportation service for Enron, a marketer of natural gas, pursuant to a transportation agreement dated September 6, 1988. The term of the transportation agreement is for a initial period of 120 days and thereafter until August 1 1990, and shall continue in effect month-to-month thereafter unless terminated upon 30 days prior written notice. ANR proposes to transport on a peak day up to 200,000 dekatherm; on an average day up to 200,000 dekatherm; and on an annual basis 73,000,000 dekatherm of natural gas for Enron. ANR states that it would receive the gas at an existing points of receipt in ANR's Oklahoma, Kansas, Texas, Louisiana, offshore Louisiana, offshore Texas gathering areas and redeliver the gas for the account of Enron at an existing interconnection located in states of Kentucky, Indiana, and Ohio. It is alleged that Enron would pay ANR the effective rate contained in ANR's rate schedule ITS. ANR avers that construction of facilities would not be required to provide the proposed service.

It is explained that the proposed service is currently being performed pursuant to the 120-day self implementing provision of § 284.223(a)(1) of the Commission's regulations. ANR commenced such self-implementing service on March 1, 1989, as reported in Docket No. ST89-2878-000.

Comment date: May 30, 1989, in accordance with Standard Paragraph G at the end of this notice.

13. Northern Natural Gas Company, Division of Enron, Corp.

[Docket N. CP89-1174-000]

Take notice that on April 7, 1989, Northern Natural Gas Company, Division on Enron Corp. (Northern), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251-1188, filed in Docket No. CP89-1174-000, a request pursuant to §157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authority to transport natural gas on behalf of Centran Corporation, a marketer of natural gas, under its blanket certificate issued in Docket No. CP86-435-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Northern states that it would transport natural gas on behalf of Centran from points of receipt located in the states of Iowa, Kansas, Minnesota, Nebraska, New Mexico, Oklahoma, South Dakota and Texas. Northern further states that the points of delivery would be located in the states of Iowa, Kansas, Oklahoma, South Dakota, Texas, and Wisconsin. Northern indicates that the peak day, average day and annual transportation volumes would be 10,000 MMBtu 7,500 MMBtu and 3,650,000 MMBtu, respectively. Northern states that construction of facilities would not be required to provide the proposed service.

Northern states that it commenced the transportation of natural gas for Centran on March 1, 1989, as reported in Docket No. ST89-2757-000 for a 120-day period pursuant to § 284.223(a) of the Commission's Regulations (18 CFR § 284.223(a)).

Comment date: May 30, 1989, in accordance with Standard Paragraph G at the end of this notice.

14. Tennessee Gas Pipeline Company

[Docket No. CP89-1203-000]

Take notice that on April 13, 1989, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP89-1203-000 a request pursuant to §§ 157.205 and 157.212 of the Commission's Regulations for authorization to change delivery points for its existing firm sales customer, Cumberland Gas Company (Cumberland), under the blanket certificate issued in Docket No. CP82-413-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Tennessee proposes to change the location of Cumberland's delivery point at the Salt Rock Meter Station in Cabell County, West Virginia. Tennessee states that it currently provides natural gas service to Cumberland pursuant to Tennessee's Rate Schedule GS-3. Tennessee further states that it also currently provides natural gas service to Cabot Corporation (Cabor) and that Cabot and Cumberland both receive Tennessee's gas at the Salt Rock Meter Station. It is explained that Cabot and Cumberland were served by a dual meter tube setup consisting of 2 parallel 4-inch meter tubes connected to a common outlet header. Tennessee indicates that at the terminus of the common outlet header, Cabot took

possession of the gas for both its and Cumberland's account and then Cabot redelivered Cumberland's gas to Cumberland slightly further downstream. It is stated that serious allocation and billing problems resulted from this method.

Tennessee states that it proposed to rearrange these facilities by severing the riser serving one of the meter tubes to the common outlet header and capping the remaining portion of the riser. It is indicated that Cumberland would disconnect from Cabot's line and reconnect their facilities at the outlet of the meter tube, a distance of approximately 50 feet. Tennessee states that the result would be that both Cabot and Cumberland would have separate and distinct meter tubes and meters. It is stated that all the above described work would take place within the station yard of the Salt Rock Meter Station and that Tennessee's cost would be approximately $2,000.

Tennessee states that there has been some confusion whether the circumstances described herein would require the instant request under its blanket certificate or whether the circumstances qualify for automatic authorization pursuant to § 157.208(a) of the Commission's Regulations. It is stated that as a result of this confusion, Tennessee's field operations performed this work and placed the new location of the delivery point in service in February of this year. Tennessee states that it is filing this request out of an abundance of caution.

Tennessee states that the total volumes to be delivered to Cumberland and Cabot would not exceed the presently authorized volumes and that the change is not prohibited by Tennessee's existing tariff. It is further stated that Tennessee has sufficient capacity to accomplish the deliveries requested herein without detriment or disadvantage to its other customers and that the requested change would have no impact on Tennessee's peak day or annual deliveries.

Comment date: May 30, 1989 in accordance with Standard Paragraph G at the end of the notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 89-9534 Filed 4-19-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. G-6342-020, et al.]

Conoco Inc., et al.; Applications for Termination or Amendment of Certificates [1]

April 14, 1989.

Take Notice that each of the Applicants listed herein has filed an application pursuant to section 7 of the Natural Gas Act for authorization to terminate or amend certificates as described herein, all as more fully described in the respective applications which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before May 2, 1989, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Lois D. Cashell,

Secretary.

Docket No. and Date Filed	Applicant	Purchaser and Location	Description
G-6342-020, D, 3-15-89	Conoco Inc., P.O. Box 2197, Houston, TX 77252.	El Paso Natural Gas Company, Monument Area, Lea County, New Mexico.	Assigned 1-24-89 to V. H. Westbrook.
CI62-1139-001, D, 3-16-89	Conoco Inc.	El Paso Natural Gas Company, AXI Apache Area, Rio Arriba and Sandoval Counties, New Mexico.	Assigned 12-1-88 to Robert L. Bayless.

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

Docket No. and Date Filed	Applicant	Purchaser and Location	Description
CI66-176-003, D, 6-17-88	Texaco Producing Inc., P.O. Box 52332, Houston, TX 77052.	Arkla Energy Resources, a division of Arkla, Inc., Steve Fazekas & Bennett State Units, Latimer County, Oklahoma.	Assigned 4-8-88 to Atlantic Richfield Company. [1]
CI78-453-004, D, 3-17-89	Conoco Inc.	Sunterra Gas Gathering Company, AXI Apache Area, Rio Arriba County, New Mexico.	Assigned 12-1-88 to Robert L. Bayless and Jerry W. Guy.
CI89-349-000, (CI68-642, D, 3-23-89.	BHP Petroleum (Americas) Inc.	Dorchester Master Limited Partnership, Big Lake Field, Reagan County, Texas.	Assigned 6-1-87 to Bledsoe Petro Corporation.

[1] Previously noticed incorrectly (54 FR 14282) in CI66-176-003 as assignment to William S. Price filed 12-14-88. The assignment to Price is being processed in CI66-176-004.

Filing code. A—Initial Service. B—Abandonment. C—Amendment to add acreage. D—Amendment to delete acreage. E—Total Succession. F—Partial Succession.

[FR Doc. 89-9477 Filed 4-19-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-226-001]

Eastern Shore Natural Gas Co.; Proposed Changes in FERC Gas Tariff

April 14, 1989.

Take notice that Eastern Shore Natural Gas Company (ESNG) tendered for filing on April 12, 1989, the following proposed change to its FERC GAS Tariff, Original Volume No. 1, First Revised Sheet No. 6B. Such tariff sheet bears a proposed effective date of August 1, 1988.

ESNG states that such proposed change is being filed to revise the billing amounts shown on Original Sheet No. 6B to comply with the provisions of Ordering Paragraph (B) of the Commission's August 26, 1988 order in the subject docket. The referenced order requires ESNG to file revised billing amounts to "track" any modifications to Transcontinental Gas Pipe Line Corporation's (Transco) take-or-pay charges ordered by the Commission.

ESNG states that copies of the filing have been served upon its jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 and Rule 214 of the Commission's rules of Practice and Procedure (18 CFR § 385.211 and § 385.214). All such motions or protests should be filed on or before April 21, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-9470 Filed 4-19-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP83-51-002 and RP89-92-001]

El Paso Natural Gas Co.; Tariff Filing

April 14, 1989.

Take notice that on April 5, 1989, El Paso Natural Gas Company ("El Paso") filed pursuant to Part 154 of the Federal Energy Regulatory Commission ("Commission") Regulations Under the Natural Gas Act ("NGA"), First Revised Sheet Nos. 1771, 1775 and 1776 and Original Sheet No. 1776-A to special Rate Schedule T-28 contained in El Paso's FERC Gas Tariff, Third Revised Volume No. 2.

El Paso states that Special Rate Schedule T-28 is comprised of a Gas Transportation Agreement ("Transportation Agreement") dated February 3, 1982, as amended, between El Paso and Chevron U.S.A. Inc. ("Chevron"), formerly Gulf Oil Corporation. The Transportation Agreement provides for the transportation of natural gas, for the account of Chevron, produced from Block 237 and transported through a lateral pipeline in which El Paso owns an interest and which is operated by Tennessee Gas Pipeline Company, a Division of Tenneco Inc., extending from the production platform located in Block 237 of the East Cameron Area, South Addition to Block 241, located in the Vermilion Area, all offshore Louisiana, pursuant to section 7 of the NGA. By order issued by the Director of the Office of Pipeline and Producer Regulation on February 16, 1984 at Docket No. CP83-51-000, et al., the Commission granted El Paso certificate authorization to transport and deliver natural gas for the account of Chevron.

El Paso states that on March 3, 1989, El Paso tendered for filing and acceptance certain tariff sheets in compliance with Order No. 509, *et seq.* In said filing, El Paso advised the Commission that special Rate Schedule T-28 contained in its FERC Gas Tariff, Third Revised Volume No. 2, provides for transportation rates other than those contained in El Paso's FERC Gas Tariff, Original Volume No. 1-A, but that El Paso and Chevron have agreed to amend the Transportation Agreement to conform to the rates under Rate Schedule T-3. El Paso states that the tendered tariff sheets, when accepted for filing and permitted to become effective will revise the Transportation Agreement to incorporate the T-3 rates contained in El Paso's FERC Gas Tariff, Original Volume No. 1-A, as agreed to by El Paso and Chevron pursuant to an Amendatory Agreement dated March 10, 1989.

El Paso requested, pursuant to § 154.51 of the Commission's Regulations, that waiver of the notice requirements of § 154.22 of the Commission's Regulations be granted so as to permit the tendered tariff sheets to become effective April 1, 1989.

Any person desiring to be heard to or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with § 154.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before April 21, 1989. Protests will be considered by the Commision in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commssion and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 89-9471 Filed 4-19-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-77-001]

Florida Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

April 14, 1989.

Take notice that Florida Gas Transmission Company on April 11, 1989, tendered for filing a revision its F.E.R.C. Gas Tariff in compliance with the Commission's Order dated March 31, 1989 in this proceeding. FGT states that the filing reflects a revision in its minimum FTS-OCS, ITS-OCS Transportation rates as precribed in said Order. FGT has requested that the proposed filing be made effective April 1, 1989.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice & Procedure (18 CFR 385.214, 385.211). All such motions or protests should be filed on or before April 21, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-9472 Filed 4-19-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ89-7-51-000]

Great Lakes Gas Transmission Co.; Proposed Changes in FERC Gas Tariff Purchased Gas Adjustment Clause Provisions

April 14, 1989.

Take notice that Great Lakes Gas Transmission Company ("Great Lakes") on April 12, 1989 tendered for filing Twenty-First Revised Sheet Nos. 57(i) and 57(ii) and Eighth Revised Sheet No. 57(v) to its FERC Gas Tariff, First Revised Volume No. 1.

Great Lakes states these tariff sheets reflect PGA rates for the months of May, June and July, 1989 pursuant to the Quarterly PGA filing requirements of § 154.304(a)(2) of the Commission's Regulations.

Great Lakes states Twenty-First Revised Sheet No. 57(ii) included Rate Schedule T-24 for firm transportation service to Consumers Power Company and POCO Petroleums Ltd. Such service was authorized by Commission Order issued March 22, 1989 in Docket No. CP88-539-000. Great Lakes filed tariff sheets for Rate Schedule T-24 on March 31, 1989 to be effective April 10, 1989.

Great Lakes requested waiver of the notice requirements of the provisions of Section 154.308 of the Commission's Regulations and any other necessary waivers so as to permit the above tariff sheets to become effective May 1, 1989.

Great Lakes also requested waiver of the requirements of § 154.304(a)(2) of the Commission's Regulations which require the filing of Quarterly PGA Filings. Great Lakes stated that it is committed to file, on a monthly basis, an out-of-cycle PGA to reflect gas pricing pursuant to current contractual arrangements. Great Lakes requested such waiver in order to save substantial administrative burdens on Great Lakes, its customers and the Commission's Staff.

Any person desiring to be heard or to protest said filing should file a Motion to Intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC, 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests should be filed on or before April 21, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 89-9473 Filed 4-19-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. G-4579-062, et al.]

OXY USA Inc. et al.; Applications for Certificates and Amendment of Certificates [1]

April 14, 1989.

Take notice that each of the Applicants listed herein has filed an application pursuant to Section 7 of the Natural Gas Act for authorization to sell natural gas in interstate commerce or to amend certificates as described herein, all as more fully described in the respective applications which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before May 2, 1989, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Lois D. Cashell,

Secretary.

Docket No. and date filed	Applicant	Purchaser and location	Description
G-4579-062 C F 3-31-89.....	OXY USA Inc., P.O. Box 300, Tulsa, OK 74102.	Northern Natural Gas Company, Division of Enron Corp., Hugoton Field, Texas County, Oklahoma.	Acreage acquired 10-1-88 from Union Pacific Resources Company.
CI89-345-000 E 3-21-89.....	Mesa Operating Limited Partnership, P.O. Box 2009, Amarillo, TX 79189.	Northern Natural Gas Company, Division of Enron Corp., Various wells, Stevens County, Kansas.	Acreage acquired 7-15-88 from the Estate of Augusta C. Pulver.
		Panhandle Eastern Pipe Line Company, Brack #1-15 and Browne #1-10 Wells, Seward County, Kansas.	Acreage acquired 7-15-88 from the Estate of Augusta C. Pulver.
		Panhandle Eastern Pipe Line Company, Various wells, Grant, Morton, and Stevens Counties, Kansas.	Acreage acquired 7-15-88 from the Estate of Augusta C. Pulver.

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

Docket No. and date filed	Applicant	Purchaser and location	Description
		Panhandle Eastern Pipe Line Company, Gentzler A-1 Well, Stevens County, Kansas.	Acreage acquired 7-15-88 from the Estate of Augusta C. Pulver.
		Panhandle Eastern Pipe Line Company, Kumaric A-1 Well, Stevens County, Kansas.	Acreage acquired 7-15-88 from the Estate of Augusta C. Pulver.
		Panhandle Eastern Pipe Line Company, Bane H-1 Well, Stevens County, Kansas.	Acreage acquired 7-15-88 from the Estate of Augusta C. Pulver.
CI89-347-000 E 3-24-89.....	Sun Exploration and Production Company, P.O. Box 2880, Dallas, TX 75221-2880.	Columbia Gas Transmission Corporation, High Island Area, South Addition, Offshore Texas.	Acreage acquired 5-1-88 from Tesoro Petroleum Corporation.
CI89-350-000 A 3-31-89	Union Oil Company of California, P.O. Box 7600, Los Angeles, CA 90051.	Williston Basin Interstate Pipeline Company, Gillette Gas Plant, Campbell County, Wyoming.	Application for a certificate to cover a sale previously covered by the operator, ARCO Oil and Gas Company.

Filing Code
A—Initial Service B—Abandonment C—Amendment to add acreage D—Amendment to delete acreage E—Total Succession F—Partial Succession

[FR Doc. 89-9478 Filed 4-19-89; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. RP89-148-000]

Southern Natural Gas Co.; Proposed Changes in FERC Gas Tariff

April 14, 1989

Take notice that on April 10, 1989, Southern Natural Gas Company (Southern) tendered for filing the following tariff sheets to its FERC Gas Tariff, Sixth Revised Volume No. 1, to be effective May 9, 1989:

Fourth Revised Sheet No. 30O
First Revised Sheet No. 30P
Fifth Revised Sheet No. 30Y
Second Revised Sheet No. 30CC
Fourth Revised Sheet No. 30GG
First Revised Sheet No. 30HH
Sixth Revised Sheet No. 30QQ
Third Revised Sheet No. 30SS
First Revised Sheet No. 30UU
Original Sheet No. 30UU.1
First Revised Sheet Nos. 45R.6-45R.7
Fourth Revised Sheet No. 45R.9
Second Revised Sheet No. 45R.10
First Revised Sheet No. 45R.19a

Southern states that it submits the revised sheets listed above to effect certain changes to its Rate Schedules FT and IT, the General Terms and Conditions thereto, and Forms of Service Agreement under Rate Schedules FT and IT which are necessary to reflect operating procedures or to allow more flexibility in the administration thereof. Southern has requested that the revised sheets be made effective May 9, 1989, as indicated above.

Southern states that copies of the filing were mailed to all of Southern's jurisdictional purchasers, shippers, and interested state commissions, as well as the parties listed on the Commission's official service list compiled in this proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions or protests should be filed on or before April 21, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-9474 Filed 4-19-89; 8:45 am]
BILLING CODE 6717-01-M

[Docket Nos. RP88-239-010 and RP89-11-005]

Trunkline Gas Co.; Proposed Changes in FERC Gas Tariff

April 14, 1989.

Take notice that on April 10, 1989 Trunkline Gas Company (Trunkline) tendered for filing the following tariff sheets to its FERC Gas Tariff Original Volume No. 1:

To Be Effective September 29, 1988

Third Substitute Original Sheet No. 3-A.5
Third Substitute Original Sheet No. 3-A.6

To Be Effective November 28, 1988

Second Substitute Original Sheet No. 3-A.7
Second Substitute Original Sheet No. 3-A.8

Trunkline states that the proposed tariff sheets are being filed in compliance with the Commission's March 24, 1989 Order Granting Rehearing in Docket No. RP88-239-006. Specifically, these revised tariff sheets reflect the modification of the allocation methodology used to recover take-or-pay buyout and buydown costs from Trunkline's customers.

Trunkline states that copies of the filing were sent to all of Trunkline's jurisdictional sales customers and interested state commissions, as well as the parties to the above-captioned proceedings.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions or protests should be filed on or before April 21, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-9475 Filed 4-19-89; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. RP89-147-000]

United Gas Pipe Line Co.; Tariff Filing

April 14, 1989

Take notice that on April 10, 1989, United Gas Pipe Line Company (United) tendered for filing the following Tariff Sheets as part of its FERC Gas Tariff, First Revised Volume No. 1:

Original Sheet No. 4-M
Original Sheet No. 4-N
Original Sheet No. 4-O
Original Sheet No. 4-P
Original Sheet No. 4-Q
Original Sheet No. 4-R

United states that this filing is made consistent with the Commission's Order No. 500 *et. seq.*

United states that the purpose of this filing is to establish the procedures pursuant to which United will recover the take-or-pay charges to be billed by Sea Robin Pipeline Company (Sea Robin) and paid by United under Sea Robin's Docket No. RP89–141. The tariff sheets tendered set forth the principal amount plus interest that each jurisdictional sales customer of United will be required to pay in order to recover Sea Robin's take-or-pay charges billed to United by Sea Robin. Consistent with the Commission's February 29, 1988, order in *Mississippi River Transmission Corporation*, Docket No. TA88–25–000, 42 FERC ¶ 61,244 (1988), these principal amounts were developed by utilizing the same procedures that Sea Robin developed in Docket No. RP89–141.

If at any time Sea Robin is permitted by Commission order to change its take-or-pay procedures and/or the amounts to be recovered pursuant thereto, United states it will adopt the same change in its take-or-pay procedures and/or the amounts to be recovered pursuant thereto.

United is requesting an effective date April 1, 1989, for the above referenced tariff sheets, to parallel the requested effective date in Sea Robin's filing in Docket No. RP89–141.

United states that copies of this filing are being served upon United's jurisdictional sales customers, the public service commissions of the states of Alabama, Florida, Louisiana, and Mississippi, and the Railroad Commission of Texas.

Any person desiring to be heard or to protest said filing should file a Motion to Intervene or Protest with the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's regulations. All such motions of protest should be filed on or before April 21, 1989.

Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a Motion to Intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-9476 Filed 4-16-89; 8:45 am]

BILLING CODE 6717-01-M

Office of Conservation and Renewable Energy

Energy Conservation Program for Consumer Products, Petition for Waiver of Furnace Test Procedures From the Trane Co. (F–017)

AGENCY: Conservation and Renewable Energy Office, Department of Energy.

ACTION: Notice.

SUMMARY: Today's notice publishes a "Petition for Waiver" from The Trane Company (Trane), Tyler, Texas, requesting a waiver from the existing Department of Energy (DOE) test procedure for furnaces. In addition, today's notice publishes the granting of Trane's application for an Interim Waiver. Trane manufactures residential heating appliances. The petition requests DOE to grant relief from the DOE test procedure relating to the blower time delay specification for Trane's condensing furnaces TUC(–) up-flow models and TDC(–) down-flow models. Trane seeks to test using a blower delay time of 30 seconds instead of the specified 1.5 minute delay between burner on-time and blower on-time. DOE is soliciting comments, data and information respecting the petition.

DATE: DOE will accept comments, data and information not later than May 22, 1989.

ADDRESS: Written comments and statements shall be sent to: Department of Energy, Office of Conservation and Renewable Energy, Case No. F–107, Mail Stop CE–132, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Michael J. McCabe, U.S. Department of Energy, Office of Conservation and Renewable Energy, Mail Station CE–132, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9127.

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Mail Station GC–12, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9507.

Background

The Energy Conservation Program for Consumer Products (other than automobiles) was established pursuant to the Energy Policy and Conservation Act (EPCA), Pub. L. 94–163, 89 Stat. 917, as amended by the National Energy Conservation Policy Act (NECPA), Pub. L. 95–619, 92 Stat. 3266, and the National Appliance Energy Conservation Act of 1987 (NAECA), Pub. L. 100–12, which requires DOE to prescribe standardized test procedures to measure the energy consumption of certain consumer products, including furnaces. The intent of the test procedures is to provide a comparable measure of energy consumption that will assist consumers in making purchasing decisions. These test procedures appear at 10 CFR Part 430, Subpart B.

DOE has amended the prescribed test procedures by adding 10 CFR 430.27 on September 26, 1980, creating the waiver process, 45 FR 64108. DOE further amended the Department's appliance test procedure waiver process to allow the Assistant Secretary for Conservation and Renewable Energy to grant an interim waiver from test procedure requirements to manufacturers that have petitioned DOE for a waiver of such prescribed test procedures. 51 FR 42823, November 26, 1986. The waiver process allows the Assistant Secretary for Conservation and Renewable Energy to waive temporarily test procedures for a particular basic model when a petitioner shows that the basic model contains one or more design characteristics which prevent testing according to the prescribed test procedures or when the basic model contains one or more design characteristics which prevent testing according to the prescribed test procedures or when the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption as to provide materially inaccurate comparative data. Waivers generally remain in effect until final test procedure amendments become effective, resolving the problem that is the subject of a waiver.

The interim waiver provisions, added by the 1986 amendment, allow the Assistant Secretary to grant an interim waiver when it is determined that the applicant will experience economic hardship if the Application for Interim Waiver is denied, it if appears likely that the petition for waiver will be granted and/or the Assistant Secretary determined that it would be desirable for public policy reasons to grant immediate relief pending a determination on the petition for waiver.

Trane's petition seeks a waiver from the DOE test provisions that require a 1.5 minute time delay between the ignition of the burner and starting of the circulating air blower. Instead, Trane requests the allowance to test using a 30 second blower time delay when testing its condensing furnaces models TUC(–) and TDC(–). Trane states that the 30 second delay is indicative of how these condensing furnaces actually operate. Such a delay results in an energy

savings of approximately 1.8 percent. Since current DOE test procedures do not address this variable blower time delay, Trane asks that the waiver be granted.

The Department finds that it would be desirable for public policy reasons to grant Trane's Application for Interim Wavier. Specifically, in those instances where DOE has granted a waiver for a similar product design, it is in the public interest to have similar products tested and rated for energy consumption on a comparable basis. Previous waivers for this type of timed blower delay control have been granted to the Coleman Company, the Magic Chef Company and the Rheem Manufacturing Company. 50 FR, 2710, January 18, 1985, 50 FR 41553, October 11, 1985, and 53 FR 48574, December 1, 1988, respectively.

Therefore, Trane's Application for an Interim Waiver requesting relief from the DOE test procedures for its condensing furnace models TIC(-) and TDC(-) is granted.

Pursuant to paragraph (b) of 10 CFR 430.27, DOE is hereby publishing the "Petition for Waiver" in its entirety. The petition contains no confidential information. DOE solicits comments, data, and information respecting the petition.

In addition, pursuant to paragraph (e) of section 430.27 of the Code of Federal Regulations, the following letter granting the Application for Interim Waiver was issued to The Trane Company.

Issued in Washington, DC, April 12, 1989.

John R. Berg,

Assistant Secretary, Conservation and Renewable Energy.

[FR Doc. 89-9542 Filed 4-19-89; 8:45 am]

BILLING CODE 6450-01-M

Office of Energy Research

Special Research Grant Program Notice 89-4; Transport Initiative in Tokamak Fusion Plasmas

AGENCY: Department of Energy (DOE).

ACTION: Notice inviting grant applications.

SUMMARY: The Office of Energy Research (OER) of the Department of Energy (DOE) announces its interest in receiving applications for Special Research Grants related to the area of transport studies in tokamak fusion plasmas. New transport-related experiments in existing toroidal devices will be considered. Such R&D includes new diagnostics, use of existing diagnostics on new experiments, data reduction and analysis techniques, and experiment-specific models of transport and confinement. New experiments may involve, for example, installation of auxiliary equipment on these existing devices, or request for operating time on the devices to conduct a specific program that might either reduce transport or contribute to the understanding of transport in plasmas. Applications from collaborative teams or multi-institutional research groups will be welcomed.

DATES: Initial selection will be made for FY 1990 funding; for consideration for the initial selection, submission of an application to the office listed under the "Address" heading prior to June 15, 1989, is required. Information on the timing of subsequent rounds of selection will be available after June 1989, from the information contact given below.

ADDRESS: Completed applications referencing Program Notice 89-4 should be forwarded to: U.S. Department of Energy, Division of Acquisition and Assistance Management, ER-64, Office of Energy Research, Washington, DC 20545.

FOR FURTHER INFORMATION: Contact Dr. Stephen A. Eckstrand, Office of Fusion Energy, ER-55, Washington, DC 20545 (301) 353-2848 or Dr. Ronald H. McKnight, Office of Fusion Energy, ER-542, Washington, DC 20545 (301) 353-3421.

SUPPLEMENTARY INFORMATION: The intent of this particular initiative is to support research and development that would enhance the understanding of transport physics issues in fusion plasmas and/or provide new methods and operational scenarios to achieve improved energy confinement. Emphasis will be given to research that can produce near-term results. This initiative may include: installation of new hardware to affect plasma transport phenomena such as divertor baffles and pumps, pellet injectors, and auxiliary heating systems for active control of particles, plasma pressure, or current profiles; development of operational scenarios such as those with peaked density or pressure profiles; fundamental theory on physical mechanisms of transport in tokamaks; investigation of plasma transport near beta limits or in the second regime of stability; development and operation of new diagnostics such as heavy ion beam probes and laser scattering for temporal and radial resolution of plasma parameters such as current density, temperature, electron and ion densities, fluctuations, electric fields, and heat and particle flows. The proposed work should include an adequate level of analytical and numerical methods for data analysis and interpretation.

Since October 1988, a Transport Task Force composed of leading scientists from Universities and National Laboratories has been reviewing the present status of transport studies and preparing a report on the scientific issues that must be addressed in order to characterize, understand, and learn how to reduce transport in tokamaks. The report of the Transport Task Force should be completed in May 1989 and can be obtained from the individuals identified above.

The initial funding of up to approximately $5M for the initiative is included in the FY 1990 budget. A number of awards will be issued depending on the nature and excellence of the applications that are received and the availability of funds. General information about development and submission of applications, eligibility, limitations, evaluation and selection processes, and other policies and procedures is contained in the OER Special Research Grant Application and Guide. The application kit and guide is available from the U.S. Department of Energy, Office of Energy Research, Washington, DC 20545. Telephone requests may be made by calling (301) 353-2848. The Catalog of Domestic Assistance Number for this program is 81.049.

Issued in Washington, DC, on April 3, 1989.

D.D. Mayhew,

Deputy Director for Management, Office of Energy Research.

[FR Doc. 89-9405 Filed 4-19-89; 8:45 am]

BILLING CODE 6450-01-M

Special Research Grant Program Notice 89-5: Pre-Doctoral Training Grants

AGENCY: Department of Energy, (DOE).

ACTION: Notice inviting grant applications.

SUMMARY: The Office of Energy Research (OER) of the Department of Energy (DOE) announces its interest in receiving applications for Special Research Grants from historically black colleges and universities with accredited Ph.D. degree granting programs. The purpose of this program is to provide assistance for training Ph.D.'s that will increase their availability to carry out scientific research in the following OER program areas: basic energy sciences, high energy and nuclear physics, fusion energy and health and environmental research. Therefore, the applications submitted should request support for training efforts aimed at increasing the number of qualified students receiving

Ph.D degrees in physical and life sciences, mathematics, computer science, and engineering areas of graduate education. The training program is expected to contain the following activities: (1) Development and administration of a plan to recruit and enroll students in programs leading to a Ph.D in those areas mentioned above; (2) develop and provide a student evaluation and selection plan to be utilized for selection of trainees under this program; (3) develop and implement a retention and mentorship effort to assure decreased rate of student dropout; and (4) assist in developing alternative financial aid information and resources.

DATES: To permit timely consideration for awarding during FY 1989, applications submitted in response to this Notice should be received by OER's Division of Acquisition and Assistance Management by May 23, 1989.

ADDRESS: Completed applications referencing Program Notice 89–5 should be forwarded to: U.S. Department of Energy, Division of Acquisition and Assistance Management, ER–64, Office of Energy Research, Washington, DC 20545.

FOR FURTHER INFORMATION: Contact Dr. Richard E. Stephens, Director, University and Industry Division, Office of Field Operations Management, ER–44, Washington, DC 20585 (202) 586–8949.

SUPPLEMENTARY INFORMATION: It is anticipated that approximately $2M will be available for up to 12 grant awards during Fiscal Year 1989. Future fiscal year awards will be subject to the availability of funds and satisfactory progress. The amont of each award will depend upon the number of trainees and allowable non-trainee expenses approved.

In addition, this program wil provide at a maximum up to $25,000 for a twelve-month period for support of an eligible trainee. Within that amount, no more than $15,000 is available for living expenses during the same twelve-month period. No trainee will be allowed support beyond 60 months under this activity and no funds will be provided to any student if they have already completed a Ph.D program in any of the above mentioned eligible degree areas. Other allowable grant expenditures include: tuition, books and fees, attendance and/or participation in technical and professional meetings and supplies and materials. General information about development and submission of applications, eligibility, limitations, evaluation and selection processes, and other policies and procedures are contained in the OER Special Research Grant Application Kit and Guide. The application kit and guide is available from the U.S. Department of Energy, Office of Energy Research, Division of Acquisition and Assistance Management, ER–64, Washington, DC 20545. Telephone requests may be made by calling (202) 586–8949. The Catalog of Federal Domestic Assistance Number for this program is 81.049.

This notice supports DOE's goal to historical black colleges and universities in increasing the production of qualified Ph.D's in science and engineering and the specific manpower needs for future energy-related research and development. In accordance with recommendations in Executive Order 12320 dated September 15, 1981, eligibility for this program is limited to historical black colleges and universities.

D.D. Mayhew,

Deputy Director for Management, Office of Energy Research.

[FR Doc. 89–9406 Filed 4–19–89; 8:45 am]

BILLING CODE 6450–01–M

High Energy Physics Advisory Panel, Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770), notice is hereby given of the following meeting:

Name: High Energy Physics Advisory Panel (HEPAP).

Date and Time: Tuesday, May 16, 1989, 8:00 am–5:00 pm; Wednesday, May 17, 1989, 8:00 am–4:30 pm.

Place: Fermi National Accelerator Laboratory, Room 1 West, Batavia, Illinois 60510.

Contact: Dr. Enloe T. Ritter, Executive Secretary, High Energy Physics Advisory Panel, U.S. Department of Energy, ER–221, GTN Washington, DC 20545. Telephone: (301) 353–4829.

Purpose of Panel: To provide advice and guidance on a continuing basis with respect to the high energy physics research program.

Tentative Agenda

Tuesday, May 16, 1989 and Wednesday, May 17, 1989

—Discussion of National Science Foundation Elementary Particle Physics Programs
—Discussion of Department of Energy High Energy Physics Programs
—Discussion of Department of Energy Superconducting Super Collider Programs
—Update on Stanford Linear Collider
—Preliminary Consideration of Intermediate-Term DOE Laboratory Upgrade Options
—DUMAND II, GRANDE, and FLY'S EYE Subpanel Report Discussion
—Overview of Fermilab Programs
—Reports on and discussions of topics of general interest in high energy physics
—Public Comment

Public Participation

The meeting is open to the public. The Chairperson of the Panel is enpowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to make oral statements pertaining to agenda items should contact the Executive Secretary at the address or telephone number listed above. Requests must be received at least 5 days prior to the meeting and reasonable provision will be made to include the presentation on the agenda.

Minutes

Available for public review and copying at the Public Reading Room, Room 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC on April 14, 1989.

J. Robert Franklin,

Deputy Advisory Committee Management Officer.

[FR Doc. 89–9416 Filed 4–19–89; 8:45 am]

BILLING CODE 6450–01–M

Office of Hearings and Appeals

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals Department of Energy.

ACTION: Notice of implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy announces the procedures for disbursement of $50,000, plus accrued interest, obtained from Butler Fuel Corporation pursuant to a Release issued by the United States Department of Justice. The funds will be distributed to ultimate consumers who purchased kerosene and No. 2 heating oil (the covered products) from Butler between November 1, 1973 through April 30, 1974.

DATE AND ADDRESS: Applications for Refund from the Butler escrow fund

must be filed in duplicate and must be received by July 19, 1989. All Applications for Refund from this escrow fund should display a conspicuous reference to Case Number KEF–0094, and should be addressed to the Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Darlene Gee, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–6602.

SUPPLEMENTARY INFORMATION: In accordance with the procedural regulations of the Department of Energy (DOE), 10 CFR 205.282(c), notice is hereby given of the issuance of the Decision and Order set out below. The Decision sets forth the procedures that the DOE has formulated to distribute monies obtained from the Butler Fuel Corporation (Butler) to settle pricing violations with respect to the firm's sales of kerosene and No. 2 heating oil between November 1, 1973 and April 30, 1974 (the audit period).

OHA has determined that a portion of the escrow fund should be distributed to ultimate consumers of Butler kerosene and No. 2 heating oil during the audit period. In order to obtain a refund, each claimant will be required to submit a schedule of its monthly purchases of covered products from Butler. The specific requirements which an applicant must meet in order to receive a refund are set out in Section II of the Decision. Residual funds in the escrow account will be used for indirect restitution in accordance with the provisions of the Petroleum Overcharge Distribution and Restitution Act of 1986, Pub. L. No. 99–509, title III.

Applications for Refund will now be accepted provided they are filed in duplicate and received no later than 90 days after publication of this Decision and Order in the **Federal Register.** Applications should be sent to the address set forth at the beginning of this notice. All applications received will be available for public inspection between the hours of 1:00 p.m. and 5:00 p.m., Monday through Friday, except federal holidays, in the Public Reference Room of the Office of Hearings and Appeals, located in Room 1E–234, 1000 Independence Avenue, SW., Washington, DC 20585.

Dated: April 11, 1989.

George B. Breznay,

Director, Office of Hearings and Appeals.

Butler then failed to comply with the terms of the modified Remedial Order, and and the case was referred to the Department of Justice for judicial enforcement. *See* November 13, 1984 Memorandum to David J. Anderson, Civil Division, Department of Justice, from Robert G. Heiss, Assistant General Counsel for Enforcement, DOE. Under the terms of a March 27, 1987 Release executed by the Department of Justice, Butler paid the DOE $50,000 in full and final settlement of the issues raised in the 1978 Remedial Order. With interest, the total value of the Butler escrow account has grown to $56,673.11 as of February 28, 1989.

On June 14, 1988, the OHA issued a Proposed Decision and Order (PD&O) setting forth a tentative plan for the distribution of refunds to parties that make a reasonable showing of injury as a result of Butler's overcharges. In order to five notice to all potentially affected parties, a copy of the PD&O was published in the **Federal Register** and comments regarding the proposed refund procedures were solicitied. 53 FR 23307 (June 21, 1988). We received no comments concerning the proposed refund procedures for Butler. Therefore, we will adopt the procedures in the PD&O as final procedures for the distribution of the Butler refined product funds.

II. Final Refund Procedures

The procedural regulations of the DOE set forth general guidelines to be used by OHA in formulating and implementing a plan of distribution for funds received as a result of an enforcement proceeding. 10 CFR Part 205, Subpart V. The Subpart V process may be used in situations in which the DOE is unable to identify readily those persons who may have been injured by the alleged regulatory violations or to determine the amount of such injuries. A more detailed discussion of Subpart V and the authority of OHA to fashion procedures to distribute refunds is set forth in the cases of *Office of Enforcement,* 9 DOE ¶ 82,508 (1981); and *Office of Enforcement,* 8 DOE ¶ 82,597 (1981) (*Vickers*).

Pursuant to the goals of the Subpart V regulations, we will attempt to provide refunds to claimants who demonstrate that they were injured by Butler's overcharges during the November 1, 1973 through April 30, 1974 remedial order period. Because the Remedial Order underlying this proceeding covered only Butler's overcharges to its retail customers of kerosene and No. 2 heating oil, only those customers will be eligible for a refund in this proceeding. Residual funds in the Butler escrow account will be distributed in accordance with the provisions of the Petroleum Overcharge Distribution and Restitution Act of 1986 (PODRA), Pub. L. No. 99–509, Title III, *See* 51 FR 43964 (December 5, 1986).

April 11, 1989.

Decision and Order of the Department of Energy

Implementation of Special Refund Procedures

Name of Firm: Butler Fuel Corporation.

Date of Filing: June 1, 1987.

Case Number: KEF–0094.

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) may request that the Office of Hearings and Appeals (OHA) formulate and implement procedures for the distribution of funds obtained by the DOE as a result of the agency's enforcement of the Mandatory Petroleum Price and Allocation Regulations. *See* 10 CFR Part 205, Subpart V. On June 1, 1987, the ERA filed a Petition for the Implementation of Special Refund Procedures in connection with a Remedial Order issued to the Butler Fuel Corporation (Butler).

I. Background

Butler is a "retailer" of refined petroleum products as that term was defined in 10 CFR 212.31, and is located in Oxford, Massachusetts. On March 6, 1978, the DOE issued a Proposed Remedial Order (PRO) to Butler alleging that the firm violated the Mandatory Petroleum Price Regulations by overcharging its retail customers in its sales of kerosene and No. 2 heating oil (covered products) between November 1, 1973 and April 30, 1974. *See* 10 CFR Part 212 Subpart F. The PRO ordered Butler to refund the full amount of the alleged violations, $36,553.55, plus interest, to its retail customers through price rollbacks.

Butler did not contest the PRO, and on October 24, 1978, OHA issued the PRO as a final Remedial Order. *Butler Fuel Company,* No. DRW–0004 (October 24, 1978). Butler failed to comply with the provisions of the Remedial Order calling for price rollbacks, so the ERA petitioned OHA for a modification of the Remedial Order. In an April 12, 1984 Decision, OHA granted the ERA's Application for Modification and ordered Butler to remit the sum of $36,553.55, plus accrued interest, directly to the DOE. The monies were to be deposited into an interest-bearing escrow account pending ultimate distribution through a special refund

proceeding. *ERA/Butler Fuel Corp.*, 12 DOE ¶ 82,506 (1984).

A. Calculation of Refund Amounts

The first step in the refund process is the calculation of an applicant's potential refund. To accomplish this, we propose adopting a volumetric refund presumption. This presumption assumes that Butler's overcharges were spread evenly over all gallons of covered products that the firm sold during the remedial order period.

Under the volumetric presumption, a claimant's potential refund generally will be computed by multiplying the number of gallons of covered products that it purchased from Butler during the remedial order period by a volumetric factor of $0.0571 per gallon.[1] In addition, successful claimants will receive proportionate shares of the interest that has accrued on the Butler escrow account.

The volumetric refund presumption is rebuttable. Because we realize that the impact on an individual claimant may have been greater than its potential volumetric refund, a claimant may submit evidence detailing the specific overcharge that it sustained in order to be eligible for a larger refund. *See Standard Oil Co. (Indiana)/Army and Air Force Exchange Service*, 12 DOE ¶ 85,015 (1984).

As in previous cases, only claims for at least $15 in principal will be processed. This minimum has been adopted in refined product refund proceedings because the cost of processing claims for refunds of less than $15 outweighs the benefits of restitution in those instances. *See e.g., Mobil Oil Corp.*, 13 DOE ¶ 85,339 (1985). *See also* 10 CFR 205.286(b). Accordingly, an applicant must have purchased at least 254 gallons of covered products from Butler in order for its claim to be considered.

B. Determination of Injury

Once a claimant's potential refund has been calculated we must determine whether the claimant was injured by its purchases from Butler, *i.e.*, whether it was forced to absorb the alleged overcharges. To facilitate this process, we generally adopt presumptions of injury in Subpart V proceedings. Injury presumptions are designed to allow claimants to participate in the refund process without incurring inordinate expense, and to enable OHA to consider the refund applications in the most efficient way possible. The use of presumptions in refund cases is specifically authorized by DOE procedural regulations. 10 CFR 205.282(e). Because retail purchasers of Butler covered products are the only class of purchasers eligible for refunds in this proceeding, we will adopt only two injury presumptions. We will presume that end-users of Butler covered products, and certain types of regulated firms and cooperatives were injured by their purchases from Butler. Each presumption is discussed below, along with the rationale underlying its use.

1. End-Users: First, in accordance with prior Subpart V proceedings, we will presume that end-users of Butler products, *i.e.*, ultimate consumers of the products whose businesses are unrelated to the petroleum industry, were injured by the firm's overcharges. Unlike regulated firms in the petroleum industry, members of this group generally were not subject to price controls during the remedial order period, and were not required to keep records which justified selling price increases by reference to cost increases. Consequently, analysis of the impact of the overcharges on the final prices of goods and services produced by members of this group would be beyond the scope of a special refund proceeding. *See Marion Corporation*, 12 DOE ¶ 85,014 (1984) and cases cited therein. Therefore, end-users need only document their purchase volumes of Butler covered products during the remedial order period to demonstrate that they were injured by the overcharges.

2. Regulated Firms and Cooperatives: Second, public utilities, agricultural cooperatives, and other firms whose prices are regulated by government agencies or cooperative agreements do not have to submit detailed proof of injury. Such firms would have routinely passed through price increases, including overcharges, to their customers. Likewise, their customers would share the benefits of cost decreases resulting from refunds. *See e.g., Office of Special Counsel*, 9 DOE ¶ 82,538 (1982) (*Tenneco*); *Office of Special Counsel*, 9 DOE ¶ 82,545 at 85,244 (1982) (*Pennzoil*). Such firms applying for refunds should certify that they will pass through any refund received to their customers and should explain how they will alert the appropriate regulatory body or membership group to monies received. Purchases that cooperatives subsequently resold to nonmembers will generally not be covered by this presumption.

C. General Refund Application Requirements

Pursuant to 10 CFR 205.283, we will now accept Applications for Refund from individuals and firms that were retail purchasers of kerosene and No. 2 heating oil sold by Butler between November 1, 1973 and April 30, 1974. No "class claims" on behalf of groups of applicants will be permitted. There is no specific application form that must be used. However, a suggested format for filing a Butler Refund Application is set forth in the Appendix to this Decision. All Applications for Refund should include the following information:

(1) A conspicuous reference to Case Number KEF–0094 and the name and address of the applicant during the period for which the claim is filed, as well as the name to whom the refund check should be made out and the address to which the check should be sent;

(2) The name, title, address and telephone number of a person who may be contacted by OHA for additional information concerning the Application;

(3) The manner in which the applicant used the Butler products, *i.e.*, whether it was an end-user, utility, cooperative, etc. (refiners, resellers and retailers are not eligible for refunds in this proceeding);

(4) For each covered product (kerosene and No. 2 heating oil), a monthly schedule of purchases from Butler during the period November 1, 1973 through April 30, 1974. *See supra* note 4. If the applicant was an indirect purchaser it must also submit the name of its immediate supplier and indicate why it believes the covered product was originally sold by Butler;

(5) All relevant material necessary to support its claim in accordance with the injury presumptions and requirements outlined above;

(6) If the applicant was or is in any way affiliated with Butler, an explanation of the nature of the affiliation;

(7) A statement as to whether there has been a change in ownership of the entity that purchased the Butler refined petroleum products during or since the remedial order period. If there was such a change, the applicant must submit a copy of the sales agreement, as well as provide the names and addresses of the previous or subsequent owners;

(8) A statement as to whether the applicant has received a refund, from any source, for the overcharges

[1] This figure is computed by dividing the $50,000 received from Butler by the 875,000 gallons of covered products sold by the firm during the remedial order period. *See* January 7, 1988 Memorandum of Telephone conversation between James Butler, President of Butler, and Jon F. Leyens, OHA Staff Analyst.

identified in the ERA audits underlying this proceeding;

(9) A statement as to whether the applicant or a related firm has filed any other Application for Refund in this proceeding;

(10) A statement as to whether the claimant or a related firm has authorized any other individual(s) to file an Application for Refund on the claimant's behalf in the Butler proceeding; and

(11) The following statement signed by the applicant or a responsible official of the business or organization claiming the refund: "I swear [or affirm] that the information submitted is true and accurate to the best of my knowledge and belief." *See* 10 CFR 205.283(c).

Applications for Refund should be sent to: Butler Refund Proceeding, Case No. KEF-0094, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

All applications must be filed in duplicate and must be received within 90 days from the date of publication of this Decision in the **Federal Register**. A copy of each application will be available for public insepction in the Public Reference Room of the Office of Hearings and Appeals. Any applicant that believes that its application contains confidential information must submit two additional copies of its application from which the confidential information has been deleted, together with a statement specifying why the information is confidential.

It is Therefore Ordered That:

(1) Applications for Refund from the funds remitted to the Department of Energy by Butler Fuel Corporation pursuant to a Release issued by the United States Department of Justice on March 23, 1987 may now be filed.

(2) All applications must be filed no later than 90 days after publication of this Decision in the **Federal Register**.

Date: April 11, 1989.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 89-9407 Filed 4-19-89; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OA-FRL-3558-3]

Municipal Wastewater Treatment Works Construction Programs; Grants, State and Local Assistance

AGENCY: Environmental Protection Agency.

ACTION: Waiver of Section 109, Pub. L. 100-202, for the Wayne County Department of Public Works, Wastewater Treatment Construction Grant C26291-10.

SUMMARY: The Administrator of the Environmental Protection Agency (EPA) has approved a waiver from the provisions of the Brooks-Murkowski amendment section 109, Pub. L. 100-202, for the Wayne County Department of Public Works wastewater treatment construction grant C262391-10.

This waiver allows EPA to participate in the cost of a contract to be awarded to a joint venture which includes a Japanese firm.

EFFECTIVE DATE: April 7, 1989.

FOR FURTHER INFORMATION CONTACT: Richard A. Johnson, Grants Administration Division, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 382-5240.

Date: April 7, 1989.

William K. Reilly,

Administrator.

[FR Doc. 89-9511 Filed 4-19-89; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Application Procedures for Network Organizer Applications

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The Commission will accept applications for a single network organizer for frequency 931.8875 MHz, a frequency which has been allocated on a nationwide basis for paging, from May 17, 1989 through May 19, 1989, inclusive. In its *First Report and Order*, CC Docket No. 87-120, the Commission decided that this frequency should be reopened for acceptance of applications. Two other network organizers were licensed in 1985 and began operations in 1986.

Applicable sections of 47 CFR Part 22, Subparts A, B, C, D, E and G are the governing Rules. The Commission will use random selection procedures to choose among qualified applicants. Only one applicant will be chosen per drawing; if that applicant ("tentative selectee") is found to be disqualified, another random selection drawing will be held. These procedures will be repeated until a qualified applicant is selected for grant.

Section 22.527 of the Commission's Rules sets out the technical and other substantive showings required of network organizer applicants. Financial showings must meet the "reasonable assurance" standard as set out in § 22.917(a). If the technical and/or financial showing of a tentative selectee's application does not meet the requirements of the rules, the tentative selectee's application will be returned as defective. All applications for frequency 931.8875 MHz will be considered mutually exclusive, notwithstanding the specific locations initially proposed.

Sections 22.23 and 22.39, concerning ownership changes to pending applications, apply to any ownership or control changes by applicants.

Any pre-filing settlement agreements must be filed with, and referenced in, the application. In addition to other applicable ownership and interest-reporting information required on FCC Form 401 and by § 22.13 of the Rules, these agreements must state clearly the name, business or residence address, and daytime telephone number of each individual and corporate participant. Corporate participants in pre-filing settlement agreements must include a list of each officer's name, title, and address. Partnership participants must include the name, address, and daytime telephone number of each partner, as well as the partnership share of each individual participant.

If pre-filing settlement participants enter into other agreements relating to the primary settlement agreement (for example, management, buyout, or finacing agreements) these further agreements must also be filed with the application.

Any post-filing settlement agreement involving the winner of the random selection procedure may not be filed until ten days after public notice of the tentative selectee. The information herein required of pre-filing agreements is also required of post-filing agreements.

The *First Report and Order* stated that existing nationwide paging licensees may not have a cognizable interest in applications for the third frequency. This means that an existing nationwide paging licensee may not have any interest, direct or indirect, in applicants which are non-publicly traded entities. An applicant which is a publicly traded entity must affirm that to the best of its knowledge, an existing nationwide paging licensee does not hold any of its debt or equity, and that it does not have any other direct or indirect interest in the applicant.

Late applications will not be accepted. Any applications filed after 5:30 p.m. on

the last day of the filing period will be unacceptable for filing.

DATES: May 17 through May 19, 1989, from 8:00 a.m. to 5:30 p.m.

ADDRESS: Federal Communications Commission, Washington DC, 20554.

FOR FURTHER INFORMATION CONTACT: Susan Magnotti, Mobile Services Division, (202) 632-6450.

Donna R. Searcy,

Secretary.

[FR Doc. 89-9496 Filed 4-19-89; 8:45 am]

BILLING CODE 6712-01-M

Return Of Applications Filed Prior to Effective Date of Amendment of Part 73 of the Commission's Rules to Permit Short-Spaced FM Station Assignments Pursuant to MM Docket No. 87-121

April 13, 1989.

This is to advise applicants and their attorneys who are planning to file applications on FCC Form 301 (Application for Authority to Construct of Make Changes in a Commercial Broadcast Station) and FCC Form 340 (Application for Authority to Construct or Make Changes in Noncommercial Educational Broadcast Station) that the effective date of the rules adopted in the *Report and Order* in MM Docket No. 87-121 will be the date approval of the pertinent amendments of FCC Forms 301 and 340 by the Office of Management and Budget (OMB).

The Commission staff will return *all* FCC Forms 301 and 340 applications requesting authority to permit short-spaced FM station assignments pursuant to the rules adopted in MM Docket 87-121 filed prior to the effective date of the rules.

For additional information contact Jackie Swank at (202) 632-7191.

Donna R. Searcy,

Secretary.

[FR Doc. 89-9495 Filed 4-19-89; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-822-DR]

Major Disaster and Related Determinations; Washington

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Washington (FEMA-822-DR), dated April 14, 1989, and related determinations.

DATED: April 14, 1989.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3614.

Notice: Notice is hereby given that, in a letter dated April 14, 1989, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*, Pub. L. 93-288, as amended by Public Law 100-707), as follows:

I have determined that the damage in certain areas of the State of Washington, resulting from flooding and mudslides caused by subsurface freezing and heavy rainfall on March 8-17, 1989, is of sufficient severity and magnitude to warrant a major disaster declaration under Public Law 93-288, as amended by Public Law 100-707. I, therefore, declare that such a major disaster exists in the State of Washington.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under Pub. L. 93-288, as amended by Pub. L. 100-107, for Public Assistance will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Joan F. Hodgins of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Washington to have been affected adversely by this declared major disaster: The counties of Douglas, Okanogan, Stevens, and Whitman for Public Assistance only.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Julius W. Becton, Jr.,

Director, Federal Emergency Management Agency.

[FR Doc. 89-9498 Filed 4-19-89; 8:45 am]

BILLING CODE 6718-21-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreeement No.: 224-200238.

Title: Port of Beaumont Lease Agreement.

Parties:

Port of Beaumont Navigation District of Jefferson County Texas (Beaumont)

Continental Grain Company (Continental)

Synopsis: The Agreement provides for the lease of the Beaumont's grain dock to Continental. The term of the Agreement expires January 9, 1995.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

Dated: April 14, 1989.

[FR Doc. 89-9466 Filed 4-19-89; 8:45 am]

BILLING CODE 6730-01-M

[Docket No. 89-7]

Inquiry Into Laws, Regulations and Policies of the Government of Ecuador Affecting Shipping In the United States/Ecuador Trade; Availability of Finding of No Significant Impact

Upon completion of an environmental assessment, the Federal Maritime Commission's Office of Special Studies has determined that Docket No. 89-7 will not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969, U.S.C. section 4321 et seq., and that preparation of an environmental impact statement is not required.

In Docket No. 89-7, the Commission, in response to information received from the overseas Enterprises, Inc., a U.S.-owned carrier, and the Department of State, regarding the effect of laws, regulations and policies of the government of Ecuador on shipping conditions in the United States/Ecuador trade, is issuing a Notice of Inquiry to provide interested parties an opportunity to submit comments on shipping conditions in that trade. These comments will assist the Commission in determining whether issuance of a countervailing rule pursuant to section 19(1)(b) of the Merchant Marine Act, 1920, is warranted.

This Finding of No Significant Impact ("FONSI") will become final within 10 days of publication of this notice in the **Federal Register** unless a petition for review is filed pursuant to 46 CFR 504.6(b).

The FONSI and related environmental assessment are available for inspection on request from the Office of the Secretary, Room 11101, Federal Maritime Commission, Washington, DC 20573-0001, telephone (202) 523-5725.

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 89-9467 Filed 4-19-89; 8:45 am]

BILLING CODE 6730-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

[Program Announcement 918]

Public Health Conference Support Grant Program; Availability of Funds for Fiscal Year 1989

Introduction

The Agency for Toxic Substances and Disease Registry (ATSDR) announces grant applications are to be accepted for a Public Health Conference Support Grant Program.

Authority

This program is authorized under section 104(i) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended.

Eligibile Applicants

Eligible applicants are States, and political subdivisions thereof, which may include State universities, State colleges, State research institutions, State hospitals and State and local health departments.

Availability of Funds

Approximately $75,000 will be available in Fiscal Year 1989 to fund approximately ten awards. It is exepcted that the average award will be $7,500 ranging from $5,000 to $10,000. It is expected that the awards will begin on or about September 1, 1989, and will be funded for a 12-month budget and project period. Funding estimates may vary and are subject to change.

Purpose

The ATSDR supports local, State, academic, national and international health efforts to prevent or reduce illness, disability and premature death due to exposure to toxic substances. This support often takes the form of education, and the transfer of high quality research findings and public health methods through symposia, seminars, and workshops. Systematic approaches are needed for linking applicable resources in public health with individuals and organizations involved in the practice of applying such research. The ATSDR believes that conferences and similar meetings that permit individuals engaged in public health research, education, and application (related to actual and/or potential human exposure to toxic substances) to interact are critical for the development and implementation of effective programs to prevent adverse health effects from hazardous substances.

This program will provide partial suport for non-Federal conferences on disease prevention, health promotion and information/education projects. Applications are being solicited for conferences on: (1) Health effects of toxic substances; (2) disease and exposure registries; (3) hazardous substance removal and remediation; (4) emergency response to toxic and environmental disasters; (5) risk communication; (6) disease surveillance; and (7) investigation and research.

Evaluation Criteria

Applications for support of the types of conferences above in the *Purpose* Section of this announcement will be evaluated and ranked for funding. The major factors to be considered in the evaluation of responsive applications will include:

1. *Proposed Program* (50%).
2. *Program Personnel* (30%).
3. *Applicant Capability* (20%).
4. *Program Budget—(NOT SCORED)* Comments only.

E.O. 12372 Review

Applications are not subject to review as governed by Executive Order 12372, Intergovernmental Review of Federal Programs (45 CFR 100).

CFDA Number

The Catalog of Federal Domestic Assistance number is 13.161.

Application Submission and Deadline

The original and two copies of the application shall be submitted on Form PHS-5161-1 in accordance with the following schedule. The schedule also sets forth the *anticipated* award date:

Deadline Date	*Application Award Date*
June 1	September 1

Applications must be submitted on or before the deadline date to: Henry S. Cassell, III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., Room 300, Atlanta, Georgia 30305.

1. Deadline: Applications shall be considered as meeting the deadline if they are either:

a. Received on or before the deadline date, or

b. Sent on or before the deadline date and received in time for submission to the independent review group. (Applicants should request a legibly-dated U.S. Postal Service postmark or obtain a legibly-dated receipt from a commercial carrier on U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

2. Late Applications: Applications which do not meet the *Deadline* criteria outlined above are considered late applications and will not be considered in the current competition and will be returned to the applicant.

Where To Obtain Additional Information

A complete program description, information on application procedures and an application package may be obtained from Donna M. Rushin, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., Room 300, Atlanta, Georgia 30304, (404) 842-6575 or FTS 236-6575.

Please refer to Announcement Number 918 when requesting information and submitting any application on the Request for Assistance.

Technical assistance may be obtained from Peter Sherman, Agency for Toxic

Substances and Disease Registry, 1600 Clifton Road, NE., Mail Stop F38, Atlanta, Georgia 30333, (404) 488-4630 or FTS 236-4630.

Dated: April 14, 1989.

Mary E. Guinan,

Acting Administrator for Agency for Toxic Substances and Disease Registry.

[FR Doc. 89-9464 Filed 4-19-89; 8:45 am]

BILLING CODE 4160-70-M

Centers for Disease Control

[Program Announcement 925]

HIV-Related Tuberculosis Prevention

Introduction

The Centers for Disease Control (CDC) announces the availability of Fiscal Year 1989 funds for Cooperative Agreements for Human Immunodeficiency Virus (HIV)-related Tuberculosis (TB) Prevention Activities. This program is directed to support projects to demonstrate the effectiveness, safety, and acceptability of isoniazid (NIH) therapy in preventing clinical tuberculosis among intravenous drug users (IVDU) and other groups with a high prevalence of tuberculous infection who are also at high risk of having HIV infection and who are enrolled in methadone treatment programs or other long-term health care systems which are designed to provide long-term (at least 6 to 12 months) follow-up.

Authority

These cooperative agreements are authorized by the Public Health Service Act: section 301(a) (U.S.C. 241(a)), as amended; and section 317(a) (42 U.S.C. 247b(a)). Regulations governing programs for preventive health services are codified at 42 CFR Part 51b. Subpart A contains general provisions relating to these programs.

Eligible Applicants

Eligible applicants for this program are the official public health agencies of State and local governments currently receiving cooperative agreement funds for TB Control and/or TB/HIV Activities. Current TB Control cooperative agreement recipients are located in areas accounting for 97% of the TB cases reported in the United States during 1987 and 98% of the AIDS cases reported through December 5, 1988. Since limited funds are available, those areas which have significant levels of morbidity and infection with both conditions will be given priority.

Availability of Funds

Approximately $3,300,000 is available in Fiscal Year 1989 to fund approximately 30 projects. Awards are expected to range from $30,000 to $150,000 with an average award of $100,000. It is expected that the awards will begin on August 1, 1989, for a 12-month budget period within a project period of up to 4 years. These awards will be consolidated into the TB Control and TB and HIV Activities awards. Continuation awards within the project period will be made on the basis of satisfactory progress and the availability of funds.

Cooperative agreement funds may be used to support personnel and to purchase equipment, supplies, and services directly related to project activities. Under section 317 of the PHS Act, direct assistance ("in lieu of cash") may be requested. Funds may not be used to supplant State or local funds or for inpatient care.

Purpose

The propose of this program is to demonstrate acceptability, safety, and programmatic effectiveness of INH therapy in preventing clinical TB among IVDU and other groups with a high prevalence of tuberculous infection who are also at high risk of HIV infection.

This program will address the problem of increasing HIV-related TB by ensuring that funded drug treatment programs or other health care programs employ interventions leading to achievement of the following national objectives:

A. At least 95% of all new clients and other already enrolled will receive a Mantoux tuberculin skin test using 5 tuberculin units of purified protein derivative (PPD) with results recorded in millimeters (mm) of induration, unless this test has been previously performed and documented. All enrollees will be tested initially, and subsequent enrollees will be tested within 2 weeks of enrolling in the program;

B. At least 95% of all clients with a 5mm or larger tuberculin skin test will be clinically evaluated for TB within 2 weeks of the skin test reading;

C. Regardless of age, at least 90% of all HIV-positive clients with a 5mm or larger induration and 90% of all HIV-negative (or HIV status unknown) IVDU clients with 10mm or more induration will be placed on INH preventive therapy if there is no evidence of clinical TB or medical contraindications; and

D. At least 80% of all clients started on treatment and who continue in the program will complete the recommended 6 months of directly observed INH preventive therapy if the HIV serostatus in negative or unknown and 12 months if the HIV is seropositive.

Program Requirements

A. *Recipient Activities*

1. Arrange for on site Mantoux tuberculin skin testing and recoding of results in millimeters of induration for (a) IVDU enrolled in drug treatment programs and/or (b) other individuals who are at high risk of having both tuberculous and HIV infection and who are enrolled in health care programs which are designed to provide long-term (at least 6 to 12 months) follow-up.

2. Provide pre-test counseling about the skin test and the need for follow-up and preventive therapy if the skin test is positive.

3. Routinely offer culturally sensitive and language specific pre- and post-test counseling and voluntary HIV antibody testing to all adults with tuberculosis. Persons with positive tuberculn skin test reactions should be routinely assessed for HIV risk factors and if persent should be offered counseling and HIV antibody testing.

4. In collaboration with the HIV/AIDS prevention programs, establish standards and implement procedures for confidential notification of sex and needle-sharing partners of persons with AIDS and HIV infection. These should emphasize the role of the seropositive person in informing partners; train seropositive persons in techniques of notifying partners; and, where appropriate, offer health departments assistance in confidentially notifying partners.

5. Ensure that clients with a 5mm or larger tuberculin skin test reaction are evaluated for clinical TB and, if present, treated according to current guidelines. Persons with symptoms suggestive of TB will be referred for evaluation regardless of the skin test reaction.

6. Ensure that clients with a positive skin test and no clinical evidence of TB or medical contraindications are started on INH preventive therapy and ensure that 6 to 12 months of uninterrupted daily or biweekly preventive therapy are provided. This will include all HIV-seropositive persons with a 5mm or larger skin test reaction and all HIV-seronegative (or HIV status unknown) with a 10mm or larger induration. An aggressive "case management" approach must be employed to ensure therapy compliance. While on preventive therapy, clients will be monitored at least monthly for compliance and signs and symptoms of possible adverse drug reactions.

7. Provide follow-up for clients who fail to comply with their preventive therapy regimens.

8. Develop a collaborative plan between the State/local health department and the drug treatment or other health programs which will be providing these services. The roles of the two agencies should be specifically defined and letters of support from the other participating health program(s) should be included. The plan should also specify how the confidentiality of patient records will be ensured and should include documentation which permits the use of and reporting of the HIV antibody test results for the purposes described in the application.

9. Determine by HIV status the number of TB cases identified during initial screening procedures, the number occurring during preventive therapy, and the number occurring during the 2-year period following preventive therapy.

B. *Centers for Disease Control Activities*

1. Assist in the development of appropriate counseling messages and in the training of staff.

2. Assist in implementing public health and medical policies and recommendations related to the diagnosis, treatment, and prevention of HIV-related TB.

3. Assist in developing data collection instruments and in the analysis and interpretation of data to evaluate HIV-related TB prevention activities.

Review and Evaluation Criteria

Applications will be reviewed and evaluated according to the following criteria:

A. The degree of need for support to prevent HIV-related tuberculosis;

B. The extent of HIV-related TB problems;

C. The degree to which long- and short-term objectives are consistent with the national goal and objectives and are realistic, specific, measurable, and consistent with availability of funds.

D. The overall potential effectiveness of the applicant's proposed activities and methods for meeting the stated objectives and ensuring confidentiality.

E. The adequacy of plans to evaluate progress in implementing methods and in achieving objectives related to TB/HIV activities.

In addition, consideration will be given to the completeness of required fiscal information and the extent to which the budget request is clearly justified and consistent with the intended use of cooperative agreement funds.

E.O. 12372 Review

Applications are subject to review as governed by Executive Order 12372, Intergovernmental Review of Federal Programs.

Other Requirements

Recipients must comply with the document titled: *Content of AIDS-Related Written Materials, Pictorials, Audiovisuals, Questionnaires, Survey Instruments, and Educational Sessions* (October 1988). (54 FR 10049, March 9, 1989)

All recipients must have procedures in place to ensure the confidentiality of patient records.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance Numbers are 13.116, Project Grants and Cooperative Agreements for Tuberculosis Control Programs, and 13.118, Acquired Immunodeficiency Syndrome (AIDS) Activity.

Application Submission and Deadline

The original and one copy of the application (PHS 5161-1) must be submitted to Nancy Bridger, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., Room 300, Atlanta, Georgia 30305, on or before April 28, 1989.

A. *Deadline.* Applications shall be considered as meeting the deadline if they are either:

1. Received at the above address on or before the deadline date, or

2. Sent on or before the deadline date and received in time for submission to the independent review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

B. *Late Applications.* Applications which do not meet the criteria in A. 1. or 2. are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicant.

C. *Copies of Applications.* A copy of the application should be simultaneously submitted to the appropriate Department of Health and Human Services Regional Office. For applicants who are other than State agencies, the appropriate State health agency should be notified of the submission of the application.

Where to Obtain Additional Information

Information on application procedures may be obtained from Marsha Driggans or Anne Foglesong, Grants Management Specialists, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., Room 300, Atlanta, GA 30305, (404) 842-6640, or FTS 236-6640. Please refer to Announcement Number 925 when requesting information and submitting any application under this announcement.

Technical assistance may be obtained from Harry A. Stern or Christopher H. Hayden, Division of Tuberculosis Control, Center for Prevention Services, Centers for Disease Control, Atlanta, GA 30333, (404) 639-2519 or FTS 236-2519 and (404) 639-2524 or FTS 236-2524, respectively.

Technical assistance is also available from the appropriate Department of Health and Human Services Regional Office.

Dated: April 14, 1989.

Signed by:

Robert L. Foster,

Acting Director, Office of Program Support, Centers for Disease Control.

[FR Doc. 89-9465 Filed 4-19-89; 8:45 am]

BILLING CODE 4160-18-M

Immunization Practices Advisory Committee; Meeting

Action: Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), the Centers for Disease Control announces the following Committee meeting:

Name: Immunization Practices Advisory Committee

Time and Date: May 10, 1989, 8:30 a.m.-5 p.m.; May 11, 1989, 8:30 a.m.-1 p.m.

Place: Conference Room 207, Centers for Disease Control, 1600 Clifton Road, NE., Atlanta, Georgia 30333

Status: Open

Purpose: The Committee is charged with advising on the appropriate uses of immunizing agents.

Matters to Be Discussed: The Committee will discuss draft recommendations for ACIP statements on viral hepatitis and mumps; research priorities of vaccine preventable diseases; vaccine information pamphlets; measles; and will consider other matters of relevance among the Committee's objectives. Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Cheryl Counts, Staff Assistant, Centers for Disease Control (1-B46), 1600 Clifton Road, NE., Mailstop A20, Atlanta,

Georgia 30333, Telephones: FTS: 236–3851. Commercial: (404) 639–3851

Dated: April 14, 1989.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 89–9463 Filed 4–19–89; 8:45 am]

BILLING CODE 4160–18–M

National Institute for Occupational Safety and Health; Assessment of Exposures of Health Care Personnel to Aerosols of Ribavirin; Meeting

The following meeting will be convened by the National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control (CDC):

Name: Meeting on the Assessment of Exposures of Health-Care Personnel to Aerosols of Ribavirin.

Date: June 30, 1989.

Place: Centers for Disease Control, Auditorium A, 1600 Clifton Road, NE., Atlanta, Georgia 30333.

Time: 8:30 a.m.–5:00 p.m.

Status: Open to the public, limited only by space available.

Purpose: NIOSH will conduct a meeting to discuss exposures of health-care personnel to aerosolized ribavirin. Topics for consideration will include a review of existing environmental data, pharmacokinetics, potential risk of adverse reproductive effects, engineering controls, and personal protective devices, as they apply to worker exposures incurred in the course of caring for patients receiving treatment with this drug.

Additional information may be obtained from: Mr. Robert A. Rinsky, Division of Surveillance, Hazard Evaluations, and Field Studies, NIOSH, Mail Stop R–9, 4676 Columbia Parkway, Cincinnati, Ohio 45226, Telephone: Commercial: (513) 841–4382, FTS: 684–4382.

Dated: April 13, 1989.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 89–9462 Filed 4–19–89; 8:45 am]

BILLING CODE 4160–19–M

Food and Drug Administration

Advisory Committee: Meeting

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meeting and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

Meeting: The following advisory committee meeting is announced:

Dermatologic Drugs Advisory Committee

Date, time, and place. May 8, 1989, 8:30 a.m., Conference Rms. D and E, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD.

Type of meeting and contact person. Open public hearing, 8:30 a.m. to 9:30 a.m., unless public participation does not last that long; open committee discussion, 9:30 a.m. to 12:30 p.m.; closed committee deliberations, 1:30 p.m. to 5 p.m.; Isaac F. Roubein, Center for Drug Evaluation and Research (HFD–9), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4695.

General function of the committee: The committee reviews and evaluates available data on the safety and effectiveness of marketed and investigational human drugs for use in the treatment of dermatologic disorders.

Agenda-Open public hearing. Interested persons requesting to present data, information, or views, orally or in writing, on issues pending before the committee, should communicate with the committee contact person.

Open committee discussion. The committee will discuss the current status of isotretinoin, Accutane®, Hoffman-LaRoche, Inc.

Closed committee deliberations. The committee will discuss trade secret and/or confidential commercial information relevant to pending investigational new drug number 29–951 and new drug application number 19–795. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Each public advisory committee meeting listed above may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. The dates and times reserved for the separate portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guidelines (Subpart C of 21 CFR Part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR Part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

Persons interested in specific agenda items to be discussed in open session may ascertain from the contact person the approximate time of discussion.

Details on the agenda, questions to be addressed by the committee, and a current list of committee members are available from the contact person before and after the meeting. Transcripts of the open portion of the meeting will be available from the Freedom of Information Office (HFI–35), Food and Drug Administration, Rm. 12A–16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting will be available from the Freedom of Information Office (address

above) beginning approximately 90 days after the meeting.

The Commissioner, with the concurrence of the Chief Counsel, has determined for the reasons stated that those portions of the advisory committee meetings so designated in this notice shall be closed. The Federal Advisory Commtitee Act (FACA), as amended by the Government in the Sunshine Act (Pub. L. 94–409), permits such closed advisory committee meetings in certain circumstances. Those portions of a meeting designated as closed, however, shall be closed for the shortest possible time, consistent with the intent of the cited statutes.

The FACA, as amended, provides that a portion of a meeting may be closed where the matter for discussion involves a trade secret; commercial or financial information that is privileged or confidential; information of a personal nature, disclosure of which would be a clearly unwarranted invasion of personal privacy; investigatory files compiled for law enforcement purposes; information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action; and information in certain other instances not generally relevant to FDA matters.

Examples of portions of FDA advisory committee meetings that ordinarily may be closed, where necessary and in accordance with FACA criteria, include the review, discussion, and evaluation of drafts of regulations or guidelines or similar preexisting internal agency documents, but only if their premature disclosure is likely to significantly frustrate implementation of proposed agency action; review of trade secrets and confidential commercial or financial information submitted to the agency; consideration of matters involving investigatory files compiled for law enforcement purposes; and review of matters, such as personnel records or individual patient records, where disclosure would constitute a clearly unwarranted invasion of personal privacy.

Examples of portions of FDA advisory committee meetings that ordinarily shall not be closed include the review, discussion, and evaluation of general preclinical and clinical test protocols and procedures for a class of drugs or devices; consideration of labeling requirements for a class of marketed drugs or devices; review of data and information on specific investigational or marketed drugs and devices tha have previously been made public; presentation of any other data or information that is not exempt from public disclosure pursuant to the FACA, as amended; and, notably deliberative sessions to formulate advice and recommendations to the agency on matters that do not independently justify closing.

This notice is issued under section 10 (a)(1) and (2) of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770–776 (5 U.S.C. App. I)), and FDA's regulations (21 CFR Part 14) on advisory committees.

Dated: April 14, 1989.

Frank E. Young,

Commissioner of Food and Drugs.

[FR Doc. 89–9415 Filed 4–19–89; 8:45 am]

BILLING CODE 4160–01–M

Consumer Participation; Open Meeting

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the following district health fraud program.

Dallas District Office, chaired by Gerald E. Vince, District Director. The topic to be discussed is health fraud.

DATE: Tuesday, May 9, 1989, 8 a.m. to 4:45 p.m.

ADDRESS: Texas Department of Health, Auditorium, 1100 West 49th St., Austin, TX 78756.

FOR FURTHER INFORMATION CONTACT:

Juan A. Tijerina, Consumer Affairs Officer, Food and Drug Administration, 727 East Durango, Rm. B-406, San Antonio, TX 78206–1200, 512–229–6737.

or

Sheryl L. Baylor, Consumer Affairs Officer, Food and Drug Administration, 1445 North Loop West, #420, Houston, TX 77008, 713–220–23222.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to educate and inform the public on matters pertaining to consumer fraud and quackery, to enhance relationships between local consumers and FDA's district offices, and to contribute to the agency's consumer education programs.

Dated: April 14, 1989.

Alan L. Hoeting,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 89–9412 Filed 4–19–89; 8:45 am]

BILLING CODE 4160–01–M

Health Care Financing Administration

Public Information Collection Requirements Submitted to the Office of Management and Budget for Clearance

AGENCY: Health Care Financing Administration, HHS.

The Department of Health and Human Services (HHS) previously published a list of information collection packages it submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (Pub. L. 96–511). The Health Care Financing Administration (HCFA), a component of HHS, now publishes its own notices as the information collection requirements are submitted to OMB. The HCFA has submitted the following requirements to OMB since the last HCFA list was published.

1. *Type of Request:* Reinstatement; *Title of Information Collection:* Request for Reconsideration of Part A Health Insurance Benefits; *Form Number:* HCFA–2649; *Frequency:* On occasion; *Respondents:* Individuals or households and State/local governments; *Estimated Number of Responses:* 62,000; *Average Hours per Response:* .25; *Total Estimated Burden Hours: 15,500.*

2. *Type of Request:* Reinstatement; *Title of Information Collection:* Installment Agreement on Beneficiary Refund of Overpayment; *Form Number:* HCFA–9005; *Frequency:* On occasion; *Respondents:* Individuals or households; *Estimated Number of Responses:* 3,240; *Average Hours per Response:* .16; *Total Estimated Burden Hours: 518.*

3. *Type of Request:* Extension; *Title of Information Collection:* HMO/CMP Disenrollment Survey Form; *Form Number:* HCFA–602; *Frequency:* On occasion; *Respondents:* Individuals or households; *Estimated Number of Responses:* 13,931; *Average Hours per Response:* .25; *Total Estimated Burden Hours:* 3,483.

4. *Type of Request:* Revision; *Title of Information Collection:* Request for Certification for Physical Therapist in Independent Practice; *Form Number:* HCFA–262; *Frequency:* Annually; *Respondents:* State/local governments; *Estimated Number of Responses:* 400; *Average Hours per Response:* .25; *Total Estimated Burden Hours:* 100.

5. *Type of Request:* Revision; *Title of Information Collection:* Information Collection Requirements for Income and Eligibility Verification System; *Form Number:* HCFA–R–74; *Frequency:* Annually; *Respondents:* State/local governments; *Estimated Number of*

Responses: 54; *Average Hours per Response:* 80 (Reporting) and 1,764 (Recordkeeping); *Total Estimated Burden Hours:* 4,320 (Reporting) and 95,257 (Recordkeeping) = 99,577 total hours.

6. *Type of Request:* Extension; *Title of Information Collection:* Disclosure of Ownership and Control Interest Statement; *Form Number:* HCFA–1513; *Frequency:* Annually; *Respondents:* Small businesses or organizations; *Estimated Number of Responses:* 30,000; *Average Hours per Response:* .5; *Total Estimated Burden Hours:* 15,000.

7. *Type of Request:* Extension; *Title of Information Collection:* State Agency Sheets for Verifying Exclusions from the Prospective Payment System; *Form Number:* HCFA–437; *Frequency:* Annually; *Respondents:* State/local governments; *Estimated Number of Responses:* 1,744; *Average Hours per Response:* .25; *Total Estimated Burden Hours:* 436.

8. *Type of Request:* Extension; *Title of Information Collection:* Information Collection Requirements for Hospice Care Service: Nursing; *Form Number:* HCFA–R–66; *Frequency:* On occasion; *Respondents:* Small businesses or organizations; *Estimated Number of Responses:* 1; *Average Hours per Response:* 1; *Total Estimated Burden Hours:* 1.

9. *Type of Request:* Revision; *Title of Information Collection:* Conditions of Participation for Long Term Care Facilities for Medicare/Medicaid; *Form Numbers:* HCFA–R–45 and 46; *Frequency:* Recordkeeping; *Respondents:* State/local governments, businesses or other for profit, and small businesses/organizations; *Estimated Number of Responses:* 15,000; *Average Hours per Response:* 77.83; *Total Estimated Burden Hours:* 1,167,500.

10. *Type of Request:* Extension; *Title of Information Collection:* Home Health Agency Request for Certification in the Medicare/Medicaid Program and Survey Report Form;; *Form Numbers:* HCFA–1515 and 1572; *Frequency:* Annually; *Respondents:* State/local governments; *Estimated Number of Responses:* 3,180; *Average Hours per Response:* 1.75; *Total Estimated Burden Hours:* 5,565.

11. *Type of Request:* Revision; *Title of Information Collection:* Physical Therapist in Independent Practice Survey Report Form; *Form Number:* HCFA–3042; *Frequency:* On occasion and annually; *Respondents:* State/local governments; *Estimated Number of Responses:* 300; *Average Hours per Response:* 2; *Total Estimated Burden Hours:* 600.

12. *Type of Request:* Extension; *Title of Information Collection:* Rural Health Clinic Request for Certification and Survey Report Form; *Form Numbers:* HCFA–29 and 30; *Frequency:* Annually; *Respondents:* State/local governments and small businesses or organizations; *Estimated Number of Responses:* 148; *Average Hours per Response:* 1.75; *Total Estimated Burden Hours:* 259.

Additional Information or Comments: Call the Reports Clearance Officer on 301–966–2088 for copies of the clearance request packages. Written comments and recommendations for the proposed information collections should be sent directly to the following address:

OMB Reports Management Branch, Attention: Allison Herron, New Executive Office Building, Room 3208, Washington, DC 20503.

Dated: April 5, 1989.

Louis B. Hays,

Acting Administrator, Health Care Financing Administration.

[FR Doc. 89–9516 Filed 4–19–89; 8:45 am]

BILLING CODE 4120–03–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

[Docket No. N–89–1974; FR–2651]

Termination of Public Housing Tenancy for Drug-Related Criminal Activity

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: As a part of the priority for drug-free public housing that has been announced by the Secretary of Housing and Urban Development, this Notice is intended to ensure the widest possible awareness of new laws that Congress has enacted to help eradicate illegal drug activity from public housing. Public Housing Agencies (PHAs) and Resident Management Corporations (RMCs) are urged to make all public housing residents aware of these new laws and enlist their fullest participation in the overall effort to free their home environments from the scourge of illegal drugs.

FOR FURTHER INFORMATION CONTACT: Nancy Chisholm, Director, Policy Staff, Office of Public and Indian Housing (PIH), Department of Housing and Urban Development, Room 4118, 451 Seventh Street, SW., Washington, DC 20410. Telephone number (202) 755–6713. Hearing- or speech-impaired persons may call HUD's TDD number, (202) 245–0850. (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION:

I. Lease Provision for Termination of Tenancy (Eviction).

Section 5101 of the Anti-Drug Abuse Act of 1988 amended section 6(1) of the United States Housing Act of 1937 to include the following language:

(1) Each public housing agency shall utilize leases which—

* * * * *

(5) provide that a public housing tenant, any member of the tenant's household, or a guest or other person under the tenant's control shall not engage in criminal activity, including drug-related criminal activity, on or near public housing premises, while the tenant is a tenant in public housing, and such criminal activity shall be cause for termination of tenancy.

For purposes of paragraph (5), the term 'drug-related criminal activity' means the illegal manufacture, sale, distribution, use, or possession with intent to manufacture, sell, distribute, or use, of a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)).

Every PHA's or RMC's lease form should include the provisions required by this law. See 24 CFR Part 966, Subpart A, for the regulatory requirements for lease changes. (Although this statutory amendment does not apply to Indian Housing Authorities, they are free to adopt comparable lease provisions.)

Note that the new statutory prescription addresses criminal activity only. Pursuant to existing regulations, public housing leases also include, among the causes for lease termination, disruptive conduct that impairs the rights of other residents to the peaceful use and enjoyment of their homes. The 1988 law does not restrict the proper enforcement of those existing lease provisions, including eviction according to applicable law.

The decision whether to initiate proceedings to terminate tenancy in a particular case remains a matter for good judgment by the PHA or the RMC based on the factual situation. The statutory policy does not restrict the PHA's or RMC's exercise of wise and humane judgment, weighing the interests of all concerned. On the other hand, the statute makes it clear that PHAs and RMCs have full authority to initiate eviction for violation of the prohibition on criminal activity when they consider such action to be justified.

II. Lease Forfeiture.

The Anti-Drug Abuse Act of 1988 also includes (as section 5105) a clarifying amendment expressly stating that

leasehold interests are among the types of property interests that are subject to the forfeiture provisions of the Controlled Substances Act (21 U.S.C. 881(a)(7)). PHAs and RMCs may wish to consult with the appropriate United States Attorney's Office regarding the latter's use of this lease forfeiture procedure as one of the means available under Federal or State law to eliminate the threat of illegal drugs from public housing.

Dated: April 13, 1989.

Thomas Sherman,

Acting General Deputy Assistant Secretary for Public and Indian Housing.

[FR Doc. 89-9480 Filed 4-19-89; 8:45 am]

BILLING CODE 4210-33-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK-967-4230-15 AA-6985-D]

Alaska Native Claims Selection

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of sec. 14(b) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(b), will be issued to Klukwan, Inc., for approximately 1,393.146 acres. The lands involved are in the vicinity of Long and Dall Islands, Alaska.

Copper River Meridian, Alaska

T. 80 S., R. 83 E.
T. 81 S., R. 84 E.
T. 81 S., R. 85 E.

A notice of the decision will be published once a week, for four (4) consecutive weeks, in the *Ketchikan Daily News*. Copies of the decisions may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513-7599 ((907) 271-5960).

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal Government or regional corporation, shall have until May 22, 1989 to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights.

Patricia A. Baker,

Acting Chief, Branch of KCS Adjudication.

[FR Doc. 89-9461 Filed 4-19-89; 8:45 am]

BILLING CODE 4310-JA-M

[ID-943-09-4214-12; I-2448]

Termination of Classification for Multiple Use Management; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Classification termination.

SUMMARY: This action terminates a classification order which originally segregated approximately 302,945 acres of public land from disposal under various land laws. The lands are located in the Idaho Falls District and within the Big Butte and Medicine Lodge Resource Areas. The classification was partially terminated in May of 1981. The remaining classification is no longer needed because the Resource Management Plans prepared for the areas provide the necessary protection of the resources this classification sought to protect. In addition, many of the disposal laws for which the lands were segregated have since been repealed by the Federal Land Policy and Management Act of 1976. This section will open 301,380 acres of public lands specified to the agricultural land laws. These lands, with the exception of 80 acres closed to the mining laws, have been and continue to be open to the mining and mineral leasing laws and to all other public land laws. This action will also open an additional 80 acres to the mining laws.

EFFECTIVE DATE: April 20, 1989.

FOR FURTHER INFORMATION CONTACT: William E. Ireland, BLM, Idaho State Office, 3380 Americana Terrace, Boise, Idaho 83706, 208-334-1597.

1. Pursuant to authority delegated to me by BLM Manual, section 1203—Delegation of Authority (48 FR 85), I hereby terminate the Bureau of Land Management Multiple-Use Classification Order dated July 2, 1969, and published in the **Federal Register** July 10, 1969, Vol. 34, No. 131, Pages 11429-11430, insofar as it affected the lands described below:

Boise Meridian

T. 9 N., R. 29 E.
Secs. 1 to 3, inclusive;
Sec. 10, N½;
Sec. 11, N½;
Secs. 12, 13, 24, 25 and 36.
T. 10 N., R. 29 E.
Secs. 1 to 3, inclusive;
Secs. 10 to 15, inclusive;
Secs. 22 to 27, inclusive;
Secs. 34 to 27, inclusive.
T. 8 N., R. 30 E.
Secs. 1 to 23, inclusive;
Secs. 26 to 28, inclusive;
Sec. 29, E½;
Sec. 32, NE¼;
Secs. 33 to 35, inclusive.
T. 9 N., R. 30 E.
Secs. 2 to 11, inclusive;
Secs. 13 to 36, inclusive.
T. 10 N., R. 30 E.
Secs. 5 to 8, inclusive;
Secs. 17 to 20, inclusive;
Secs. 29 to 33, inclusive.
T. 8 N., R. 31 E.
Secs. 1 to 18, inclusive.
T. 9 N., R. 31 E.
Secs. 22 and 23.
T. 9 N., R. 36 E.
Sec. 2, W½;
Sec. 3, all;
Sec. 4, E½;
Secs. 6, 7, and 10;
Sec. 11, W½;
Sec. 14, W½;
Secs. 15, 18, 19, and 22;
Sec. 23, W½;
Sec. 27, W½;
Sec. 28, all;
Secs. 30 to 32, inclusive;
Sec. 33, N½;
Sec. 34, NW¼.
T. 10 N., R. 36 E.
Sec. 10, E½, E½W½;
Secs. 13 and 14;
Sec. 15, E½;
Sec. 22, E½;
Secs. 23 to 26, inclusive;
Sec. 27, E½.
T. 11 N., R. 36 E.
Secs. 5 and 6.
T. 12 N., R. 36 E.
Secs. 19 to 23, inclusive;
Secs. 26 to 35, inclusive.
T. 9 N., R. 37 E.
Sec. 1, S½S½;
Sec. 2, S½S½;
Sec. 3, S½S½;
Secs. 10 to 36, inclusive.
T. 10 N., R. 37 E.
Sec. 1, NW¼NE¼, N½NW¼;
Sec. 2, N½, SW¼;
Secs. 3 to 5, inclusive;
Secs. 8 to 10, inclusive;
Sec. 11, W½;
Sec. 14, W½;
Secs. 15 to 21, inclusive;
Secs. 28 to 32, inclusive.
T. 10 N., R. 38 E.
Secs. 11 to 18, inclusive;
Secs. 21 to 28, inclusive;
Secs. 33 to 36, inclusive.
T. 11 N., R. 38 E.
Secs. 3 and 4;
Sec. 9, N½;
Sec. 10, N½.
T. 12 N., R. 38 E.
Sec. 2, S½;
Sec. 8, S½;
Secs. 9 to 11, inclusive;
Sec. 14, N½;
Sec. 15, N½;
Secs. 16 and 17;
Sec. 20, N½;
Sec. 21, N½;

Sec. 26, SW¼SW¼;
Sec. 27, S¼, S½N½;
Secs. 33 and 34.
T. 10 N., R. 39 E.
Sec. 6, E½E½;
Sec. 9;
Secs. 16 to 18, inclusive.

The areas described aggregate approximately 301,300 acres in Clark County.

2. The Multiple Use Classification cited in paragraph one, which segregated certain recreation and archeological sites from the mining and agricultural land laws, is hereby terminated insofar as it affects the sites described below:

Boise Meridian

Medicine Lodge Recreation Site No. 2

T. 11 N., R. 34 E.
Sec. 17, NW¼NW¼;
Sec. 18, NE¼NE¼.

The area described contains 80 acres in Clark County.

3. The following-described archeological sites remain segregated from the mining and agricultural land laws by virtue of the July 2, 1969, Classification Order:

Warm Springs Archeological Site

T. 11 N., R. 32 E.
Sec. 25, E½NE¼.

Spring Hollow Archeological Site

T. 12 N., R. 33 E.
Sec. 22, NE¼NW¼.

The areas described aggregate 120 acres in Clark County.

4. The segregative effect on the lands described in paragraphs one and two will terminate upon publication of this notice in the **Federal Register** as provided by the regulations in 43 CFR 2091.7-1(b)(3).

5. At 9:00 a.m. on May 19, 1989, the lands described in paragraphs one and two shall be open to the agricultural land laws, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable laws. All valid applications received at or prior to 9:00 a.m. on May 19, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing. The lands described in paragraphs one and two, with the exception of 80 acres closed to the mining laws, have been and continue to be open to the mining and mineral leasing laws and to all other public land laws.

6. At 9:00 a.m. on May 19, 1989, the lands described in paragraph two shall be open to location and entry under the United States mining laws. Appropriation of land described under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

Delmar D. Vail,

State Director.

Dated: April 11, 1989.

[FR Doc. 89-9517 Filed 4-19-89; 8:45 am]

BILLING CODE 4310-GG-M

[ID-943-09-4214-12; I-2837]

Termination of Classification for Multiple Use Management; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Classification termination.

SUMMARY: This action terminates a classification order which originally segregated approximately 1,035,395 acres from disposal under various land laws in the Shoshone District and within the Bennett Hills and Monument Resource Areas. The classification was partially terminated in August of 1982. The remaining classification is no longer needed because the Resource Management Plans prepared for the areas provide the necessary protection of the resources this classification sought to protect. In addition, many of the disposal laws for which the lands were segregated have since been repealed by the Federal Land Policy and Management Act of 1976. This action will open approximately 235,766 acres of public lands specified to the agricultural land laws. These lands, with the exception of 1,337.68 acres closed to the mining laws, have been and continue to be open to the mining and mineral leasing laws and to all other public land laws. This action will also open an additional 1,337.68 acres to the mining laws.

EFFECTIVE DATE: April 20, 1989.

FOR FURTHER INFORMATION CONTACT: William E. Ireland, BLM, Idaho State Office, 3380 Americana Terrace, Boise, Idaho 83706, 208-334-1597.

1. Pursuant to authority delegated to me by BLM Manual, section 1203—Delegation of Authority (48 FR 85), I hereby terminate the Bureau of Land Management Multiple-Use Classification Order dated November 20, 1970, and published in the **Federal Register** November 26, 1970, Vol. 35, No. 230, Pages 18131-18135, insofar as it affected the lands described below:

Boise Meridian

Blaine County

T. 1 S., R. 16 E.
Sec. 14, NW¼SW¼, NE¼SE¼ in Blaine County.
T. 1 S., R. 18 E.
Sec. 4, lots 1, 2.
T. 2 S., R. 21 E.
Secs. 20 to 29, inclusive.
T. 1 N., R. 22 E.
Sec. 15, W½NE¼, NE¼NW¼.

Camas County

T. 1 S., R. 16 E.
Sec. 14, NW¼SW¼, S½S½, NE¼SE¼;
Sec. 15, SE¼NW¼, NE¼SW¼, S½SW¼, SE¼.
T. 2 N., R. 16 E.
Sec. 30, N½SW¼SW¼.

Elmore County

T. 4 S., R. 11 E.
Sec. 17, East of Shoshore District boundary.

Gooding County

T. 5 S., R. 12 E.
Sec. 35, SE¼.
T. 7 S., R. 14 E.
Sec. 1, S½SE¼;
Sec. 3, SW¼, S½SE¼;
Sec. 10, E½, NE¼NW¼, S½NW¼, NE¼SW¼;
Secs. 11 and 12;
Sec. 13, N½, N½S½, S½SE¼;
Sec. 14, N½N½, S½NE¼, SE¼NW¼, NE¼SW¼, N½SE¼;
Sec. 15, NE¼NE¼;
Sec. 24, E½NE¼.
T. 5 S., 15 E.
Sec. 12, SE¼SW¼, NE¼SE¼, S½SE¼;
Sec. 13, NE¼, E½NW¼, SW¼NW¼; S½;
Sec. 14, SE¼NE¼, SW¼NW¼, S½;
Sec. 15, S½NE¼, SE¼NW¼, E½SW¼, SE¼;
Sec. 21, SE¼SE¼;
Sec. 22, N½NE¼, SW¼NE¼, W½;
Sec. 23, E½E½, S½SW¼, SW¼SE¼;
Sec. 24;
Sec. 25, N½, N½S½;
Sec. 26, NE¼, N½NW¼, SE¼NW¼, NE¼SW¼, N½SE¼;
Sec. 27, N½N½, SW¼NE¼, S½NW¼, NW¼SW¼, NW¼SE¼;
Sec. 28, E½NE¼, E½SE¼, SE¼;
Sec. 33, N½N½, SW¼NE¼, S½NW¼.
T. 6 S., R. 15 E.
Sec. 11, SE¼;
Sec. 12, SE¼SW¼;
Sec. 13;
Sec. 14, N½, SW¼;
Sec. 15, N½N½, S½NE¼, E½SE¼;
Sec. 19, SE¼SE¼;
Sec. 20, SE¼NE¼, S½;
Sec. 21, E½;
Sec. 22, lot 1, SE¼NE¼; S½;
Secs. 23 to 29, inclusive;
Secs. 30, E½E½;
Sec. 31, lot 4, E½, E½W½;
Secs. 32 to 36, inclusive.
T. 7 S., R. 15 E.

Secs. 1 to 18, inclusive;
Sec. 19, lots 1, 2, NE¼, E½NW¼, NE¼SW¼, N½SE¼;
Sec. 20, N½, W½SW¼, NW¼SE¼;
Sec. 21, N½N½;
Sec. 22, N½, N½S½, S½SE¼;
Sec. 23;
Sec. 24, N½, N½S½, S½SW¼, SW¼SE¼;
Sec. 26, N½, SW¼, W½SE¼;
Sec. 27, NE¼, N½SE¼, SE¼SE¼.

T. 5 S., R. 16 E.
Sec. 7, lots 3, 4, E½SW¼, W½SE¼;
Sec. 18, 19;
Sec. 30, lots 1, 2, 3, NE¼, E½NW¼, NE¼SW¼, SE¼.

T. 6 S., R. 16 E.
Sec. 6, SE¼SW¼, NE¼SW¼, S½SE¼;
Sec. 7, E½, E½W½;
Secs. 18, 19;
Secs. 30, 31.

T. S., R. 16 E.
Secs. 6, 7;
Sec. 18;
Sec. 19, lots 1, 2, N½NE¼, SW¼NE¼, E½NW¼;

Jerome County

T. 7S., R. 16 E.
Secs. 1 to 5, inclusive;
Secs. 8 to 10, inclusive;
Sec. 11, N½, SW¼, W½SE¼;
Sec. 12, N½N½, S½NE¼;
Sec. 14, NW¼, NW¼SW¼;
Sec. 17;
Sec. 20, E½, SE¼NW¼, NE¼SW¼, S½SW¼.

T. 7 S., R. 17 E.
Secs. 1, 2;
Sec. 3, lots 1, 2, SE¼;
Sec. 6, lots 2 to 5, inclusive, W½SE¼;
Sec. 7, lot 1, NW¼NE¼;
Sec. 10, NE¼, NE¼NW¼, NE¼SW¼;
Sec. 11, N½N½, SW¼NE¼, S½NW¼, NW¼SW¼;
Sec. 12, E½, N½NW¼, SE¼NW¼;
Sec. 13, NE¼.

T. 7S., R. 18 E.
Secs. 5 to 8, inclusive;
Secs. 16, 17;
Sec. 18, NE¼NE¼;
Sec. 19, E½SE¼;
Sec. 20, N½NE¼, NE¼NW¼, S½N½, S½;
Secs. 21 to 29, inclusive;
Sec. 30, NE¼, SE¼NW¼, E½SW¼, SE¼;
Sec. 31, NE¼, E½NW¼;
Sec. 32, NE¼, N½NW¼, SW¼NW¼;
Sec. 33, N½, N½SW¼;
Secs. 34 to 36, inclusive.

T. 8 S., R. 18 E.
Secs. 1 to 3, inclusive;
Sec. 4, lots 1, 2, S½N½, W½W½SW¼;
Secs. 10 to 15, inclusive;
Sec. 21, SE¼NE¼, NE¼SE¼, S½SE¼;
Secs. 22 to 24, inclusive;
Sec. 25, NW¼, NW¼SW¼;
Sec. 26, NE¼, N½NW¼, SE¼NW¼, NE¼SW¼, NW¼SE¼;
Sec. 27, NE¼NE¼.

T. 9S., R. 18 E.
Sec. 25, SE¼NE¼NW¼, NE¼SE¼NW¼;
Sec. 28, S½SW¼, SE¼;
Sec. 29, S½SE¼;
Sec. 32, lot 5, N½N½;
Sec. 33, lot 1, N½, N½S½, SE¼SW¼, S½SE¼.

T. 10 S., R. 18 E.
Sec. 3, lots 4, 5;
Sec. 4, lots 1, 2;

T. 7 S., R. 19 E.
Secs. 19 to 36, inclusive.

T. 8 S., R. 19 E.
Secs. 1 to 24, inclusive;
Sec. 25, W½;
Sec. 26, NW¼;
Sec. 28, W½W½NE¼NE¼; NW¼NE¼, N½N½SW¼NE¼, NW¼NW¼S E¼NE¼, N½NW¼, N½S½NW¼, N½S½S½NW¼;
Secs. 29, 30;
Sec. 31, Lot 1, NE¼, NE¼NW¼.

T. 7 S., R. 20 E.
Secs. 19 to 36, inclusive.

T. 8 S., R. 20 E.
Secs. 1 to 18, inclusive;
Sec. 19, lots 1 to 8, inclusive, E½, E½NW¼;
Secs. 20 to 28, inclusive;
Sec. 29, E½, E½SW¼;
Sec. 32, E½, E½W½ north of canal;
Secs. 33 to 36, inclusive.

T. 9 S., R. 20 E.
Sec. 1, lots 1 to 4, inclusive, S½NE¼, S½NW¼, SW¼;
Secs. 2 and 3;
Sec. 4, lots 1 to 4, inclusive, S½N½;
Sec. 5, lots 5, 6, 9, 10, SE¼NE¼;
Sec. 10, N½NE¼;
Sec. 11, N½;
Sec. 12, W½.

T. 8 S., R. 21 E.
Secs. 1 jto 3, inclusive;
Sec. 4, lots 1 to 4, inclusive, SE¼NE¼, SE¼;
Secs. 5 to 7, inclusive;
Sec. 8, W½E¼, W½;
Sec. 9, N½NE¼;
Sec. 10, NW¼;
Sec. 11, S½SE¼;
Sec. 12, E½, E½NW¼, SW¼;
Sec. 13, all;
Sec. 14, N½, N½S½, SE¼SW¼, S½SE¼;
Sec. 15, SE¼NE¼;
Secs. 17 to 20, inclusive;
Sec. 21, NW¼, S½;
Sec. 22, S½NE¼, SE¼NW¼;
Sec. 23, NE¼, E½NW¼, SW¼NW¼;
Sec. 24, N½N½;
Sec. 27, W½NW¼, SW¼;
Sec. 28, W½, SW¼SE¼;
Secs. 29 to 31, inclusive;
Sec. 32, N½, NW¼, W½SE¼;
Sec. 33, NW¼NE¼, N½NW¼;
Sec. 34, W½NW¼.

Lincoln County

T. 5 S., R.16 E.,
Sec. 13, all;
Sec. 14, NE¼NE¼, S½NE¼, S½;
Sec. 15, S½;
Sec. 17, all;
Secs. 20 to 29, inclusive;
Sec. 32, N½, E½SW¼, SE¼;
Secs. 33 to 36, inclusive.

T. 6 S., R. 16 E.,
Secs. 1 to 5, inclusive;
Secs. 8 to 17, inclusive;
Secs. 20 to 29, inclusive;
Secs. 32 to 35, inclusive.

T. 5 S., R. 17 E.,
Sec. 14, SW¼, W½SE¼;
Sec. 15, SW¼NW¼, NW¼SW¼, S½S½, N¼SE¼;
Sec. 16, south of Big Wood River;
Sec. 17, W½NW¼, SE¼NW¼, S½;
Secs. 23 to 26, inclusive;
Sec. 34, N½NE¼.

T. 6 S., R. 17 E.,
Sec. 2, SW¼SW¼;
Sec. 3, lots 3, 4, 7, S½NW¼, SW¼, W½SE¼;
Secs. 4 to 29, inclusive;
Sec. 30, lots 1 to 3, inclusive, NE¼, E½NW¼, NE¼SW¼, N½SE¼, SE¼SE¼;
Sec. 32, E½NE¼, NE¼SE¼;
Secs. 33 to 36, inclusive.

T. 5 S., R. 18 E.,
Sec. 28, SW¼;
Sec. 33, S½SE¼, N½SE¼, SW¼SE¼.

T. 6 S., R. 18 E.,
Sec. 7, lots 3, 4, SE¼SW¼, SW¼SE¼;
Sec. 17, SW¼NW¼, S½;
Secs. 18, 19;
Sec. 20, SW¼NE¼, NW¼, N½SW¼, W½SE¼;
Sec. 28, S½;
Sec. 29, SW¼, S½SE¼;
Secs. 30 to 33, inclusive;
Sec. 34, W½.

T. 7 S., R. 18 E.,
Secs. 1 to 4, inclusive;
Secs. 9 to 16, inclusive.

T. 6 S., R. 19 E.,
Sec. 13, S½;
Sec. 14, NE¼NE¼, S½N½, S½;
Sec. 15, SW¼NW¼, S½;
Sec. 21, NE¼, NE¼;
Sec. 22, NW¼NE¼;
Secs. 23 to 26, inclusive;
Sec. 34, SE¼NE¼, E½SE¼;
Secs. 35, 36.

T. 7 S., R. 19 E.,
Sec. 1, all;
Sec. 2, lots 1 to 3, inclusive, S½NE¼, SE¼NW¼, SE¼;
Sec. 3, S½SW¼, SW¼SE¼;
Secs. 4 to 18, inclusive.

T. 6 S., R. 20 E.,
Sec. 16, S½;
Sec. 17 S½;
Sec. 18, lots 3, 4, E½SW¼, SE¼;
Secs. 19 to 24, inclusive;
Sec. 25, N½, W½SW¼;
Secs. 26 to 34, inclusive;
Sec. 35, N½, N½S½.

T. 7 S., R. 20 E.,
Sec. 1, lots 3, 4, SW¼NW¼, SW¼;
Secs. 2 to 18, inclusive.

T. 6 S., R. 21 E.,
Sec. 19, lots 1 to 12, inclusive, NE¼, N½SE¼;
Sec. 20, W½NE¼, W½, SE¼;
Sec. 28, S½;
Sec. 29, E½, E½NW¼, NE¼SW¼;
Sec. 30, lots 2 to 4, inclusive;
Sec. 31, SE¼NE¼, E½SE¼;
Sec. 32, E½, E½W½, SW¼NW¼, W½SW¼;
Sec. 33, all;
Sec. 34, W½SW¼.

T. 7 S., R. 21 E.,
Secs. 1 to 3, inclusive;
Sec. 4, lots 1, 2, S½NE¼, N½SE¼;
Sec. 7;
Sec. 8, S½SW¼;
Sec. 9, SE¼SW¼, S½SE¼;
Secs. 10 to 14, inclusive;
Sec. 17, NW¼, N½SW¼, SW¼SW¼;

Secs. 18, 19;
Sec. 20, W½NW¼, SW¼, W½SE¼, SE¼ SE¼;
Sec. 22, SE¼SE¼;
Secs. 23 to 26, inclusive;
Sec. 27, E½E½;
Sec. 29 to 32, inclusive;
Sec. 33, S½;
Sec. 34, S½S½;
Sec. 35, E½, S½SW¼;
Sec. 36, all.
T. 6 S., R. 22 E.,
Sec. 29, N½SW¼, SW¼SW¼;
Sec. 30, lots 6 to 12, inclusive, S½NE¼, SE¼;
Sec. 31, all;
Sec. 32, lots 1 to 4, inclusive, S½NE¼, SE¼ NW¼, N½S½;
Sec. 33, lots 1 to 4, inclusive, NW¼, N½ S½.
T. 7 S., R. 22 E.,
Secs. 1 to 11, inclusive;
Sec. 12, N½, N½SW¼, NW¼SE¼;
Secs. 14 to 23, inclusive;
Secs. 26 to 35, inclusive.
T. 7 S., R. 23 E.,
Secs. 5, 6, south of UPRR;
Sec. 7, lost 1 to 3, inclusive, E½E½;
Sec. 8, NW¼NW¼;
Sec. 29, SW¼NW¼;
Sec. 30, E½NE¼.
T. 8 S., R. 22 E.,
Sec. 4, lots 3, 4, S½NW¼, SW¼;
Secs. 5 to 7, inclusive;
Sec. 8, NE¼, W½;
Sec. 17, W½;
Sec. 18, all;
Sec. 19, lots 1 to 4, inclusive, N½NE¼, E½ NW¼, SE¼SE¼;
Sec. 20, W½.

The public lands in the areas described aggregate approximately 234,428 acres in Blaine, Camas, Elmore, Gooding, Jerome, Lincoln, and Minidoka Counties.

2. The Multiple Use Classification cited in paragraph one, which segregated certain recreation sites from the mining and agricultural land laws, is hereby terminated insofar as it affects the sites described below:

Boise Meridian

Devil's Corral Area (Includes three sites)

Vineyard Lake

Devil's Corral

Devil's Corral Springs

T. 9 S., R. 18 E.
Sec. 28, S½SW¼, SE¼;
Sec. 29, S½SE¼;
Sec. 32, lot 5, N½N½;
Sec. 33, lot 1, N½, N½S½, SE¼SW¼, S½SE¼.
T. 10 S., R. 18 E.
Sec. 3, lots 4 and 5;
Sec. 4, lots 1 and 2.

Wilson Butte Cave

T. 7 S., R. 19 E.
Sec. 27, NW¼NE¼SW¼.

Milner-Gooding Canal Stop

T. 8 S., R. 19 E.
Sec. 4, SE¼SE¼.

Notch Butte Lookout

T. 6 S., R. 17 E.
Sec. 22, SW¼NE¼SW¼.

The areas described aggregate 1,337.68 acres in Jerome and Lincoln Counties.

3. The segregative effect on the lands described in paragraphs one and two will terminate upon publication of this notice in the **Federal Register** as provided by the regulations in 43 CFR 2091.7–1(b)(3).

4. At 9:00 a.m. on May 12, 1989, the lands described in paragraphs one and two shall be open to the agricultural land laws, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable laws. All valid applications received at or prior to 9:00 a.m. on May 12, 1989, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing. The lands described in paragraphs one and two, with the exception of 1,337.68 acres closed to the mining laws, have been and continue to be open to the mining and mineral leasing laws and to all other public land laws.

5. At 9:00 a.m. on May 12, 1989, the lands described in paragraph two shall be open to location and entry under the United States mining laws. Appropriation of land described under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. Sec. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

Delmar D. Vail,
State Director.

Dated: April 11, 1989.

[FR Doc. 89–9518 Filed 4–19–89; 8:45 am]
BILLING CODE 4310–GG–M

[ID–943–09–4214–12; I–3663]

Partial Termination of Classification for Multiple Use Management; Idaho.

AGENCY: Bureau of Land Management, Interior.

ACTION: Classification termination.

SUMMARY: This action partially terminates a classification order which originally segregated 201,240 acres of public land from disposal under various land laws. The lands are located in the Idaho Falls District and within the Medicine Lodge Resource Area. The classification was partially terminated in May of 1981. The remaining classification is no longer needed because the Resource Management Plan prepared for the area provides the necessary protection of the resources this classification sought to protect. In addition, many of the disposal laws for which the lands were segregated have since been repealed by the Federal Land Policy and Management Act of 1976. This action will open 201,000 acres of public lands specified to the agricultural land laws. These lands have been and continue to be open to the mining and mineral leasing laws and to all other public land laws.

EFFECTIVE DATE: April 20, 1989.

FOR FURTHER INFORMATION CONTACT: William E. Ireland, BLM, Idaho State Office, 3380 Americana Terrace, Boise, Idaho 83706, 208–344–1597.

1. Pursuant to authority delegated to me by BLM Manual, Section 1203—Delegation of Authority (48 FR 85), I hereby terminate the Bureau of Land Management Multiple-Use Classification Order dated November 13, 1970, and published in the **Federal Register** November 20, 1970, Vol. 35, No. 226, Pages 17862–17863, insofar as it affected the lands described below:

Boise Meridian

Jefferson County

T. 8 N., R. 32 E.,
Secs. 1, 2, and 3;
Secs. 10 to 15, inclusive.
T. 8 N., R. 33 E.,
Sec. 5, lots 3 and 4, S½NW¼, SW¼;
Sec. 6, all;
Sec. 7, lots 1 to 4, inclusive, N½NE¼, E½W½;
Sec. 18, lots 1 to 4, inclusive, E½W½.
T. 4 N., R. 34 E.,
Secs. 1, 2, and 3;
Secs. 10 to 15, inclusive;
Secs. 22 to 27, inclusive;
Sec. 28, SE¼SE¼;
Sec. 33, E½E½;
Secs. 34, 35 and 36.
T. 5 N., R. 34 E.,
Secs. 10 to 15, inclusive;
Secs. 22 to 27, inclusive;
Secs. 34, 35 and 36.
T. 7 N., R. 34 E.,
Secs. 1 to 4, inclusive;
Secs. 9 to 14, inclusive;
Sec. 15, E½.
T. 8 N., R. 34 E.,
Secs. 1 to 4, inclusive;
Secs. 9 to 16, inclusive;
Secs. 21 to 28, inclusive;
Secs. 33 to 36, inclusive.
T. 4 N., R. 35 E.,

Secs. 2 to 9, inclusive;
Sec. 10, N½;
Secs. 17, 18 and 19;
Sec. 20, W½NW¼;
Sec. 30, N½, SW¼;
Sec. 31, W½.
T. 5 N., R. 35 E.,
Sec. 1, lots 1, 2, 3, E½SW¼, SE¼;
Sec. 7, all;
Sec. 8, SW¼SW¼;
Sec. 11, S½N½, S½;
Sec. 12, NE¼, NE¼NW¼, S½NW¼, S½;
Secs. 13, 14 and 15;
Sec. 17, W½NW¼, S½;
Secs. 18 to 24, inclusive;
Sec. 25, N½;
Secs. 26 to 35, inclusive.
T. 6 N., R. 35E.,
Sec. 13, SE¼;
Secs. 24, 25 and 36.
T. 7 N., R. 35 E.,
Sec. 1, N½, W½SW¼;
Secs. 2 to 10, inclusive;
Sec. 11, W½E½, W½;
Sec. 13, W½W½;
Secs. 14 to 18, inclusive;
Sec. 19, N½NE¼, SE¼NE¼;
Sec. 20, N½;
Sec. 21, N½;
Sec. 22, N½;
Sec. 23, N½NW¼, SW¼NW¼.
T. 8 N., R. 35E.,
Secs. 1 to 36, inclusive;
T. 5 N., R. 36 E.,
Sec. 2, lots 5 and 6, S½NW¼, SW¼;
Secs. 3 to 10, inclusive;
Secs. 15 to 21, inclusive;
Sec. 27, SW¼NW, W½SW¼;
Secs. 28, 29 and 30.
T. 6 N., R. 36 E.,
Secs. 1 to 4, inclusive;
Sec. 8, E½;
Secs. 9 to 17, inclusive;
Sec. 18, NE¼, S½;
Secs. 19 to 36, inclusive;
T. 7 N., R. 36 E.,
Secs. 24 and 25;
Sec. 34, SE¼;
Sec. 35, S½;
Sec. 36, all.
T. 8 N., R. 36E.,
Secs. 1 to 9, inclusive;
Sec. 11, N½;
Sec. 12, N½, SE¼;
Sec. 13, NE¼;
Secs. 16 to 21, inclusive;
Sec. 28, N½;
Sec. 29, N½;
Sec. 30, all.
T. 4 N., R. 37 E.,
Sec. 12, S½SE¼;
Sec. 13, NE½, S½;
Sec. 23, NE¼NE¼, S½NE½, NW¼SE¼;
Sec. 24, NW¼NW¼.
T. 5 N., R. 37 E.,
Secs. 1 to 6, inclusive;
Secs. 9 to 12, inclusive;
Sec. 14, W½;
Sec. 15, all.
T. 6 N., R. 37 E.,
Secs. 1 to 36, inclusive;
T. 7 N., R. 37E.,
Sec. 1, E½;
Sec. 12, E½;
Sec. 13, all;
Secs. 19 to 36, inclusive;
T. 4 N., R. 38 E.,
Sec. 7, lot 4;
Sec. 18, lots 1 to 4, inclusive, SE¼NW¼, E½SW¼;
Sec. 19, W½NE¼, E½NW¼.
T. 5 N., R. 38 E.,
Secs. 4 to 9, inclusive;
T. 6 N., R. 38 E.,
Secs. 4 to 9, inclusive;
Secs. 16 to 21, inclusive;
Secs. 28 to 33, inclusive.
T. 7 N., R. 38 E.,
Secs. 4 to 9, inclusive;
Secs. 16 to 21, inclusive;
Secs. 28 to 33, inclusive;

Madison County

T. 5 N., R. 38 E.,
Secs. 1, 2, 3, and 10.
T. 6 N., R. 38 E.,
Secs. 1, 2, and 3;
Secs. 10 to 15, inclusive;
Secs. 22 to 27, inclusive;
Secs. 34, 35 and 36.
T. 7 N., R. 38 E.,
Secs. 22 to 27, inclusive;
Secs. 34, 35 and 36.
T. 6 N., R. 39 E.,
Secs. 7, 18 and 19.
T. 7 N., R. 39 E.,
Sec. 19, N½.

The areas described aggregate approximately 201,000 acres of public lands in Jefferson and Madison Counties.

2. The segregative effect on the lands described in paragraph one will terminate upon publication of this notice in the **Federal Register** as provided by the regulations in 43 CFR 2091.7–1(b)(3).

3. At 9:00 a.m. on May 16, 1989, the lands described in paragraph one shall be open to the agricultural land laws, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable laws. All valid applications received at or prior to 9:00 a.m. on May 16, 1989, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing. The lands described in paragraph one have been and continue to be open to the mining and mineral leasing laws and to all other public land laws.

Delmar D. Vail,

State Director.

Dated: April 11, 1989.

[FR Doc. 89–9519 Filed 4–19–89; 8:45 am]

BILLING CODE 4310-GG-M

[WY-040-09-4300-90]

Rock Springs District Grazing Advisory Board Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting of the Rock Spring District Grazing Advisory Board.

SUMMARY: This notice sets forth the schedule and agenda of a meeting of the Rock Springs District Grazing Advisory Board.

DATES: May 17, 1989, 9 a.m. until 4 p.m. and May 18, 1989, 9 a.m. until 12 p.m.

ADDRESS: Lincoln County Public Library Community Room, 519 Emerald Street, Kemmerer, Wyoming 83101.

FOR FURTHER INFORMATION CONTACT: Donald H. Sweep, District Manager, Rock Springs District, Bureau of land Management, P.O. Box 1869, Rock Springs, Wyoming 82902–1869, (307) 382–5350.

SUPPLEMENTARY INFORMATION: The agenda for the meeting will include:

May 17, 9 a.m.

1. Introduction and opening remarks
2. Review of minutes from last meeting
3. Election of a Chairman and Vice Chairman
4. Briefing Topics: Planning Status, Budget, Ongoing EIS Efforts
5. Ranger program
6. Oil & Gas program
7. Tour of Mau Exchange lands, northwest of Kemmerer

May 18, 8:30 a.m.

1. QUEST Progream update
2. Land exchange priorities
3. Mau tract management
4. Drought planning
5. Public Comment Period

The meeting is open to the public. Interested persons may make oral statements to the Board between 11 a.m. and 12 p.m., May 18, or file written statements for the Board's consideration. Anyone wishing to make an oral statement should notify the Distirct Manager at the above address by May 15, 1989.

Depending on the number of persons wishing to make oral statements, a time limit per person may be established by the District Manager.

Donald H. Sweep,

District Manager.

[FR Doc. 89–9420 Filed 4–19–89; 8:45 am]

BILLING CODE 4310-22-M

[ID-030-09-4212-13]

Realty Action (I-23235); Intent To Prepare a Planning Amendment to the Little Lost/Birch Creek Management Framework Plan; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent to prepare a planning amendment to the Little Lost/

Birch Creek Management Framework Plan.

SUMMARY: The following described public land in Clark County, Idaho will be examined for possible disposal by exchange under section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716:

Boise Meridian, Idaho

T. 9 N., R. 30E.,
Sec. 4, Lot 8, SE¼SW¼NW¼, W½SW¼ SE¼, W½E½SW¼SE¼.
Sec. 5, Lots 6 and 7.
Sec. 9, Lot 2.
Total Selected Public Lands 122.73 acres.

If these lands are found to be suitable for disposal, the United States will acquire by exchange the following described private land of equal value from Mr. Mac Wagoner:

Tract 1, Boise Meridian, Idaho
Beginning at the Northwest Corner of Section 9, T. 9 N., R. 30 E., and running North along section line into Section 4 a distance of 365 feet more or less to a fence on the West right-of-way line of Highway 28; thence S 23 degrees 22' E, along said right-of-way line 400 feet more or less to the North line of said Section 9; thence continuing along said right-of-way line 1436 feet more or less to the South line of the NW¼NW¼ of said Section 9; thence West along said South line 725 feet more or less to the West line of Section 9; thence North along said section line 1322 feet more or less to the point of beginning.

Tract 2, Boise Meridian, Idaho
Beginning at the Southwest Corner of the Northeast Quarter of the Southwest Quarter of Section 9, T. 9 N., R. 30 E., and running thence North along West side of said ⅛th line 1262 feet more or less to a fence on the West right-of-way line of Highway 28; thence S 23 degrees 22' E, along said right-of-way line 1373 feet more or less to the South line of the NE¼SW¼; thence West along said South line 543 feet more or less to the point of beginning.
Total Offered Private Lands 21.9 acres

For a period of 30 days from the date of publication of this Notice, interested parties may submit comments to LeRoy Cook, Big Butte Area Manager, Bureau of Land Management, 940 Lincoln Road, Idaho Falls, Idaho 83401.

April 11, 1989.

Gary L. Bliss,

Acting District Manager.

[FR Doc. 89-9520 Filed 4-19-89; 8:45 am]

BILLING CODE 4310-GG-M

[CO-010-09-4212-13; COC-40622]

Exchange of Lands in Grand County, CO

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

SUMMARY: Pursuant to section 206 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716), the Bureau of Land Management, Kremmling Resource Area has identified the following described land in Grand County as suitable for disposal by exchange.

Selected Land: 6th Principal Meridian

T. 2N., R. 79W.,
Sec. 18: E½SE¼.
Containing 80 acres of public land, more or less.

In exchange for these lands, the United States will acquire the following described lands from the Ritschard Cattle Co.

Offered Land: 6th Principal Meridian

T. 2N., R. 79W.,
Sec. 30: E½SE¼, except that portion lying west of Grand County Road No. 2.
T. 3N., R. 80W.,
Sec. 34: NW¼SE¼.
Containing 100 acres of Non-Federal land, more or less.

FOR FURTHER INFORMATION AND PUBLIC COMMENT: Additional information concerning this exchange, including the planning documents and environmental assessment, is available for review in the Kremmling Resource Area Office at 1116 Park Avenue, Kremmling, Colorado 80459.

For a period of 45 days from the date of this notice, interested parties may submit comments to the District Manager, Craig District Office, Bureau of Land Management, 455 Emerson Street, Craig, Colorado 81625. Any adverse comments will be evaluated by the State Director, who may vacate or modify this realty action and issue his final determination. In the absence of objections, this realty action will become a final determination of the Department of the Interior.

SUPPLEMENTARY INFORMATION: The purpose of this exchange is to facilitate improved resource mangement and to dispose of scattered, difficult to manage public land parcels while consolidating ownership of other public lands.

The values of lands to be exchanged are approximately equal: full equalization of value will be achieved through acreage adjustment, or by cash payment in an amount not to exceed 25 percent of the value of the lands being transferred out of federal ownership.

The following reservations would be made in a patent issued for the public lands:

1. A reservation to the United States of a right-of-way for ditches and canals constructed by the authority of the United States in accordance with 43 U.S.C. 945.

2. A reservation to the United States of all oil and gas mineral resources.

3. The reservation for the existing Grand County Road Right-of-Way: Road No. 2.

4. Continued grazing use for a period of two years consistent with grazing permit 1782 unless waived.

Publication of this notice in the **Federal Register** segregates the public lands from operation of the public land laws and the mining law, except for mineral leasing and exchanges under section 206 of FLPMA. The segregated effect will end upon issuance of patent or two years from the date of publication, whichever occurs first.

Date: April 10, 1989.

William J. Pulford,

District Manager.

[FR Doc. 89-9521 Filed 4-19-89; 8:45 am]

BILLING CODE 4310-JB-M

[Mr—020—09—4212-11: MTM-74887]

Realty Action; Recreation and Public Purposes (R&PP) Act Classification; Montana

The following lands in Custer County, Montana, have been examined and found suitable for classification for lease or conveyance to the State of Montana under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 et seq.). The State of Montana proposes to use the lands for an administrative facility.

Principle Meridian, Montana

T. 7 N., R. 47 E.,
Sec. 5: Tract W.
T. 8 N., R. 47 E.,
Sec. 32: Tract W.
Containing 5 acres more or less

The lands are not needed for Federal purposes. Lease or conveyance is consistent with current BLM land use planning and would be in the public interest.

The lease/patent, when issued, will be subject to the following terms, conditions and reservations:

1. Provisions of the Recreation and Public Purposes Act and to all applicable regulations of the Secretary of the Interior.

2. A right-of-way for ditches and canals constructed by the authority of the United States.

3. All minerals shall be reserved to the United States, together with the right to prospect for, mine, and remove the minerals.

4. An easement for access purposes and helicopter flight paths in accordance

with the BLM transportation plan for the Miles City District.

Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Miles City District, West of Miles City, P.O. Box 940, Miles City, Montana 59301.

Upon publication of this notice in the **Federal Register**, the lands will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease or conveyance under the Recreation and Public Purposes Act and leasing under the mineral leasing laws. For a period of 45 days from the date of publication of this notice, interested parties may submit comments regarding the proposed lease/conveyance or classification of the lands to the District Manager, Miles City District Office, P.O. Box 940, Miles City, Montana 59301. Any adverse comment will be reviewed by the State Director. In the absence of any adverse comments, the classification will become effective 60 days from the date of publication of this notice.

Date: April 13, 1989.

Allen C. Kutt,

Acting District Manager.

[FR Doc. 89-9522 Filed 4-19-89; 8:45 am]

BILLING CODE 4310-DN-M

[NV-930-09-4212-11; N-50827]

Realty Action; Lease/Purchase for Recreation and Public Purposes Clark County, NV

The following described public land in Las Vegas, Clark County, Nevada has been identified and examined and will be classified as suitable for lease/purchase under the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 et seq.). The lands will not be offered for lease/purchase until at least 60 days after the date of publication of this notice in the **Federal Register**.

Mount Diablo Meridian, Nevada

T. 20 S., R. 60 E.,
Sec. 10, NW¼NE¼NE¼NW¼, N½NW¼NE¼NW¼, N½S½NW¼NE¼NW¼, N½SW¼NE¼NE¼NW¼, N½NE¼NW¼NW¼, NE¼NW¼NW¼NW¼.

Aggregating 18.75 acres (gross).

The City of Las Vegas intends to use the land for a public park. The lease and/or patent, when issued, will be subject to the provisions of the Recreation and Public Purposes Act and applicable regulations of the Secretary of the Interior, and will contain the following reservations to the United States:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States, Act of August 30, 1890, 26 Stat. 391, 43 U.S.C. 945.

2. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove such deposits from the same under applicable law and such regulations as the Secretary of the Interior may prescribe, and will be subject to:

1. An easement for streets, roads and public utilities in accordance with the transportation plan for the City of Las Vegas.

2. Those rights for powerline purposes which have been granted to Nevada Power Company by Permit No. N-6719 under the Act of February 15, 1901, 31 Stat. 790, 43 U.S.C. 961.

3. Those rights for county road purposes which have been granted to the County of Clark by Permit No. N-43902 under the Act of October 21, 1976, 90 Stat. 2776, 43 U.S.C. 1761.

The land is not required for any federal purpose. The lease/purchase is consistent with the Bureau's planning for this area.

Detailed information concerning this action is available for review at the Office of the Bureau of Land Management, Las Vegas District, 4765 W. Vegas Drive, Las Vegas, Nevada.

Upon publication of this notice in the **Federal Register**, the above described land will be segregated from all forms of appropriation under the public land laws, including the general mining laws, except for recreation and public purposes and leasing under the mineral leasing laws.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, Las Vegas District, P.O. Box 26569, Las Vegas, Nevada 89126. Any adverse comments will be reviewed by the State Director.

In the absence of any adverse comments, the classification of the lands described in this Notice will become effective 60 days from the date of publication in the **Federal Register**.

Date: April 11, 1989.

Ben F. Collins,

(District Manager, Las Vegas, NV).

[FR Doc. 89-9523 Filed 4-19-89; 8:45 am]

BILLING CODE 4310-HC-M

[NV-930-09-4212-22]

Filing of Plats of Survey; Nevada

April 10, 1989.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The purpose of this notice is to inform the public and interested State and local government officials of the latest filing of Plats of Survey in Nevada.

EFFECTIVE DATE: Filings were effective at 10:00 a.m. on the dates shown below.

FOR FURTHER INFORMATION CONTACT: Lacel Bland, Chief, Branch of Cadastral Survey, Bureau of Land Management (BLM), Nevada State Office, 850 Harvard Way, P.O. Box 12000, Reno, Nevada 89520, 702-328-6341.

SUPPLEMENTARY INFORMATION: The Plats of Survey of lands described below were officially filed at the Nevada State Office, Reno, Nevada on the date indicated.

	Date filed
Mount Diablo Meridian, Nevada	
T. 16 N., R. 19 E.—Dependent resurvey	4/4/89
T. 42 N., R. 60 E.—Dependent resurvey	4/4/89
T. 30 S., R. 63 E.—Dependent resurvey	3/16/89
T. 30 S., R. 64 E.—Dependent resurvey and section subdivisions	3/16/89

The surveys on T. 30 S., Rs. 63 and 64 E. were accepted on March 6, 1989; the surveys on T. 16 N., R. 19 E. and T. 42 N., R. 60 E. were accepted on March 24, 1989.

All the surveys except T. 16 N., R. 19 E. were executed to meet certain administrative needs of the Bureau of Land Management. The survey of T. 16 N., R. 19 E. was executed to meet certain administrative needs of the U.S. Forest Service.

All of the above-listed plats are now the basic record for describing the lands for all authorized purposes. The plats will be placed in the open files in the BLM Nevada State Office and will be available to the public as a matter of information. Copies of the plats and related field notes may be furnished to the public upon payment of the appropriate fee.

Edward F. Spang,

State Director, Nevada.

[FR Doc. 89-9444 Filed 4-19-89; 8:45 am]

BILLING CODE 4310-HC-M

[NV-930-4214-11; Nev-051797]

Notice of Proposed Continuation of Withdrawal; Nevada

April 10, 1989.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Navy proposes that a 55,628-acre withdrawal for three Fallon Naval bombing ranges continue for an additional 25 years. The lands will remain closed to surface entry and

mining but will be opened to mineral leasing.

DATE: Comments should be sent to: Chief, Branch of Lands and Minerals Operations, Bureau of Land Management, P.O. Box 12000, Reno, Nevada 89520.

FOR FURTHER INFORMATION CONTACT: Vienna Wolder, Nevada State Office, 702–328–6326.

The U.S. Navy proposes that the existing land withdrawal made by Public Land Order 898 and modified by Public Land Order 6300, be continued for a period of 25 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714. The land is described as follows:

Mount Diablo Meridian, Nevada

(Bombing Range B–16)

T. 17 N., R. 27 E.
Sec. 1, 2 and 3;
Sec. 11, E½;
Secs. 12 and 13;
Sec. 14, E½;
Secs. 23 to 26, inclusive;
Secs. 35 and 36.
T. 17 N., R. 28 E.,
Sec. 4 to 9, inclusive;
Secs. 16 to 20, inclusive;
Secs. 29 to 32, inclusive.

(Bombing Range B–19)

T. 15 N., R. 29 E.,
Secs. 1, 2 and 3;
Secs. 10 to 15, inclusive;
Secs. 22, 23 and 24.
T. 15 N., R. 30 E.,
Secs. 3 to 10, inclusive;
Secs. 15 to 22, inclusive.

(Bombing Range B–17)

T. 16 N., R. 33 E.,
Sec. 2, SW¼, W½SE¼;
Sec. 3, S½;
Sec. 4, S½SW¼, SE¼;
Sec. 5, E½SW¼SE¼, SE¼SE¼;
Sec. 8, E½, SE¼NW¼, E½ SW¼;
Sec. 9, all;
Sec. 10, all;
Sec. 11, S½NE¼, W½NW¼NE¼, W½, SE¼;
Secs. 12 to 17, inclusive;
Secs. 20 to 28, inclusive;
Sec. 29, NE¼;
Sec. 33, NE¼;
Secs. 34 to 36, inclusive.

T. 16 N., R. 33½ E. and a portion of T. 16 N., R. 34 E., unsurveyed, more particularly described as:

Beginning from the northeast corner of section 12, T. 16 N., R. 33 E; thence easterly 2 miles; thence southerly 5 miles; thence westerly 2 miles to the southeast corner of sec. 36, T. 16 N., R. 33 E., thence a distance of 5 miles along the east lines of secs. 36, 25, 24, 13 and 12, T. 16 N., R. 33 E., to the point of beginning.

The area described contains 55,627.68 acres in Churchill County.

The purpose of the withdrawal is to allow the Navy continued use of the land for bombing ranges and to prohibit access for safety purposes. The withdrawal segregates the land from operation of the public land laws generally, including the mining laws and the mineral leasing laws. A change is proposed to reduce the segregative effect of the withdrawal by opening the lands to mineral leasing.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed continuation of the withdrawal may present their views in writing to the Chief, Branch of Lands and Minerals Operations, in the Nevada State Office.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawal will be continued and if so, for how long. The final determination on the continuation of the withdrawal will be published in the **Federal Register.** The existing withdrawal will continue until such final determination is made.

Edward F. Spang,

State Director, Nevada.

[FR Doc. 89–9445 Filed 4–19–89; 8:45 am]

BILLING CODE 4310–HC–M

[NV–930–09–4214–11; Nev–051796, Nev–056459]

Notice of Proposed Continuation of Withdrawals; Nevada

April 10, 1989.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Navy proposes that three withdrawals comprising 3526.57 acres for the Fallon Naval Air Station continue for an additional 25 years. The lands will remain closed to surface entry and mining but will be opened to mineral leasing.

DATE: Comments should be sent to: Chief, Branch of Lands and Minerals Operations, Bureau of Land Management, P.O. Box 12000, Reno, Nevada 89520.

FOR FURTHER INFORMATION CONTACT: Vienna Wolder, Nevada State Office, 702–328–6326.

The U.S. Navy proposes that the existing land withdrawals made by Public Land Order 275, 788, and 2635, be continued for a period of 25 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714. The land is described as follows:

Mount Diablo Meridian, Nevada

T. 18 N., R. 29 E.
Sec. 3, W½SW¼, SE¼SW¼;
Sec. 4, lot 6;
Sec. 10, W½NE¼, NE¼NW¼, E½SW¼, SE¼;
Sec. 14, all;
Sec. 15, all;
Sec. 22, all;
Sec. 23, all;
Sec. 24, N½NE¼, SW¼NE¼, NW¼, N½SW¼, SW¼SW¼, NW¼SE¼.

The area described contains 3526.57 acres in Churchill County.

The purpose of the withdrawals is to protect the United States' interests at the Fallon Naval Air Station and to allow the Navy continued use of the land for military purposes. The withdrawals segregate the land from operation of the public land laws generally, including the mining laws and the mineral leasing laws. A change is proposed to reduce the segregative effect of the withdrawals by opening the lands to mineral leasing.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed continuation of the withdrawals may present their views in writing to the Chief, Branch of Lands and Minerals Operations, in the Nevada State Office.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawals will be continued and if so, for how long. The final determination on the continuation of the withdrawals will be published in the **Federal Register.** The existing withdrawals will continue until such final determination is made.

Edward F. Spang,

State Director, Nevada.

[FR Doc. 89–9446 Filed 4–19–89; 8:45 am]

BILLING CODE 4310–HC–M

Fish and Wildlife Service

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management

and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed information collection requirement and related forms and explanatory material may be obtained by contacting the Service's Information Collection Clearance Officer at the phone number listed below. Comments and suggestions on the requirement should be made directly to the Service and OMB, Paperwork Reduction Project (1018-0006), Washington, DC 20503, telephone 202-395-7340.

Title: Banding Schedule.

OMB Approval No.: 1018-0006.

Abstract: The Banding Schedule is used by licensed bird banders to record specific information on the use of each Service band once it has been placed on a bird and the bird is returned to the wild. The data collected are used by Federal, State, and Provincial personnel and scientific cooperators to aid in the study of population size, mortality and survival rates, longevity, and migration patterns of birds. Banding and related band recovery information is also one of the most important tools used in the preparation of the annual United States and Canadian hunting regulations.

Service Form number: 3-860.

Frequency: On occasion.

Description of Respondents: Individuals and households, and State or local governments.

Estimated Completion Time: The reporting burden is estimated to be 12 minutes.

Annual Responses: 33,000 (each respondent averages 13.2 responses per year).

Annual Burden Hours: 6,600.

Service Information Collection Clearance Officer: James E. Pinkerton, 202-653-7500, 859 Riddell Building, U.S. Fish and Wildlife Service, Washington, DC 20240.

Date: March 28, 1989.

David Olsen,

Acting Assistant Director, Refuges and Wildlife.

[FR Doc. 89-9443 Filed 4-19-89; 8:45 am]

BILLING CODE 4310-55-M

Minerals Management Service

Information Collection Submitted for Review

The justification for the collection of information listed below has been submitted to the Office of Management and Budget for reapproval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the information collection requirement and related explanatory material may be obtained by contacting Jeane Kalas at 303-231-3046. Comments and suggestions on the requirement should be made directly to the Bureau Clearance Officer at the telephone number listed below and to the Office of Management and Budget Interior Department Desk Officer, Paperwork Reduction Project No. 1010-0076, Washington, DC 20502, telephone 202-395-7340.

Title: Application for Reward for Original Information.

Abstract: The Secretary of the Interior is authorized to pay a reward for information resulting in the recovery of royalty or other payments owed the United States from any oil or gas leases on Federal lands or the Outer Countinental Shelf. To claim a reward, individuals must voluntarily, and of their own initiative, submit an Application for Reward for Original Information. The information requested on the application enables the Minerals Management Service to determine the amount of the reward and to pay the reward.

Bureau Form Number: MMS-4280

Frequency: On occasion

Description of Respondents: Individuals

Annual Responses: 12

Estimated Completion Time: One-half hour

Annual Burden Hours: 6

Bureau Clearance Officer: Dorothy Christopher, 703-435-6213

Dated: March 17, 1989.

Jerry D. Hill,

Associate Director for Royalty Management.

[FR Doc. 89-9427 Filed 4-19-89; 8:45 am]

BILLING CODE 4310-MR-M

National Park Service

Proposed Exchange of Federal and Private Lands, Santa Monica Mountains National Recreation Area, California; Intent To Prepare an Environmental Impact Statement

SUMMARY: The National Park Service, Santa Monica Mountains National Recreation Area, Los Angeles and Ventura Counties, California, has received a proposal from Potomac Investment Associates, Gaithersburg, Maryland, to exchange private properties for lands within the National Recreation Area in order to gain access to a proposed golf course and subdivision on private lands in the Jordan Ranch area of Ventura County. In accordance with section 102(2)(C) of the National Environmental Policy Act of 1969, the National Park Service is requiring the preparation of an environmental impact statement to assess the impacts of the proposed exchange. Potomac Investment Associates has retained, with the National Park Service's concurrence, Envicom Corporation, of Calabasas Park, California, to prepare the environmental statement. The National Park Service will be the responsible federal agency.

The proposed action would effect the transfer of 864.45 acres of private lands in the China Flat area of Palo Camado Canyon to the National Park Service, in return for 59.43 acres of the Cheeseboro Canyon area to Potomac Investment Associates. Alternatives to be evaluated include no action, other available access routes to Potomac's present holdings, and other means of acquisition of such access routes such as purchase.

A public information and scoping meeting will be held on May 17, 1989, at 7:30 p.m. at the following location: El Camino High School, 5440 Valley Circle Blvd., Woodland Hills, CA.

In addition, scoping comments or request for additional information should be addressed to: Superintendent, Santa Monica Mountains National Recreation Area, 22900 Ventura Blvd., Woodland Hills, CA 93164. Scoping comments should be received no later than May 31, 1989.

The responsible official is Stanley Albright, Regional Director, Western Region. The draft environmental statement is expected to be released for public review by mid-summer, 1989, and the final environmental statement and Record of Decision completed by the end of 1989.

Dated: April 10, 1989.

Stanley T. Albright,

Regional Director, Western Region.

[FR Doc. 89-9414 Filed 4-19-89; 8:45 am]

BILLING CODE 4310-70-M

INTERNATIONAL TRADE COMMISSION

Review of the Harmonized Tariff Schedule of the United States

AGENCY: United States International Trade Commission.

ACTION: Institution of procedures for review of the Harmonized Tariff Schedule.

SUMMARY: This notice is intended to describe procedures for implementing section 1205 of the Omnibus Trade and Competitiveness Act of 1988 (the Act) relating to the continuous review of the Harmonized Tariff Schedule of the

United States by the United States International Trade Commission.

EFFECTIVE DATE: March 27, 1989.

FOR FURTHER INFORMATION CONTACT: Eugene A. Rosengarden, Director, Office of Tariff Affairs and Trade Agreements (202–252–1592) or David Beck, Chief, Nomenclature Division (202–252–1604).

Background: Section 1205 of the Act (19 U.S.C. 3005) directs the United States International Trade Commission (Commission) to keep the Harmonized Tariff Schedule of the United States (HTS) under continuous review. The Commission is directed to recommend modifications to the HTS (1) when amendments to the International Convention on the Harmonized Commodity Description and Coding System, done at Brussels on June 14, 1983, and the Protocol thereto, done at Brussels on June 24, 1986 (Convention) are recommended by the Customs Cooperation Council (Council) for adoption, and (2) as other circumstances warrant.

Continuous Review Authority

Section 1205(a) provides that the Commission may recommend to the President such modifications to the HTS as it believes necessary or appropriate—

(A) To conform the HTS with amendments made to the Convention;

(B) To promote the uniform application of the Convention and particularly the Annex thereto, which contains the Harmonized Commodity Description and Coding System (Harmonized System);

(C) To ensure that the HTS is kept up-to-date in light of changes in technology or in patterns of international trade;

(D) To alleviate unnecessary administrative burdens; or

(E) To make technical rectifications.

Section 1205(d) provides that the Commission may not recommend any modification to the HTS unless the modification is consistent with the Convention or any amendment thereto recommended for adoption. Additionally, recommended modifications must be consistent with sound nomenclature principles and must ensure substantial rate neutrality. Modifications which involve a change in any rate of duty must be consequent to, or necessitated by, recommended nomenclature modifications. Moreover, the recommended modification must not alter existing conditions of competition for the affected U.S. industry, labor, or trade. "Technical rectifications", as used in subparagraph (E) above, are limited by section 1202(6) of the Act to rectifications of an editorial character or minor technical or clerical changes which do not affect the substance or meaning of the text, such as errors in spelling, numbering, or punctuation, errors in indentation, errors (including inadvertent omissions) in cross-references to headings or subheadings or notes, and other clerical or typographical errors.

Continuous Review Procedure

The Commission will keep the HTS under continuous review and will recommend necessary or appropriate modifications to the HTS when amendments to the Harmonized System are recommended for adoption by the Council, and as other circumstances warrant, including at the request of interested Federal agencies and the public. In formulating its recommendations, the Commission will solicit, and give consideration to, the views of interested Federal agencies and the public. Interested Federal agencies and the public may request that the Commission consider a particular modification to the HTS. An original and fourteen (14) copies of such requests should be submitted to the Director, Office of Tariff Affairs and Trade Agreements, United States International Trade Commission, 500 E Street, SW., Washington, DC 20436. If the request is sufficient and the suggested modification is the proper subject matter of a Commission recommendation, as authorized in the Act, then the Commission will publish its proposed recommendation in the **Federal Register** and afford reasonable opportunity for interested parties to present their views in writing. The Commission may, in its discretion, schedule a public hearing in addition to affording the opportunity to submit written views.

The Commission will submit a report to the President presenting its final recommendations. The report will include a summary of the information on which the Commission's recommendations are based, together with a statement of the probable economic effect of each recommended change on any industry in the United States. The report also will include a copy of all written views submitted by interested Federal agencies and a copy or Commission-prepared summary of the written views of any other interested parties.

In the case where an amendment to the Convention is recommended by the Council for adoption, the Commission will publish the proposed amendment, along with a corresponding recommended modification to the HTS, where necessary or appropriate, in the **Federal Register** and invite public comment. The Commission will not, however, report a final recommendation to the President until the amendment has been accepted by the Contracting Parties. An amendment to the Convention is deemed accepted six months after the date of notification of the recommendation, unless a Contracting Party notifies an objection thereto. When a recommended amendment is not accepted, the Commission will terminate the consideration of any corresponding modifications to the HTS. When a recommended modification is accepted, the Commission will complete its consideration of any necessary or appropriate modifications and report to the President.

Hearing-impaired persons are advised that information on this matter can be obtained by contacting our TDD terminal on (202) 252–1810.

By Order of the Commission.

Kenneth R. Mason,

Secretary.

Issued: April 12, 1989.

[FR Doc. 89–9451 Filed 4–19–89; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337–TA–284]

Certain Electric Power Tools Battery Cartridges and Battery Chargers; Initial Determination Terminating Respondents on the Basis of Settlement Agreement

AGENCY: U.S. International Trade Commission.

ACTION: Notice is hereby given that the Commission has received an initial determination from the presiding officer in the above-captioned investigation terminating the following respondents on the basis of a settlement agreement: International Consumer Brands, Inc. and Home Depot Inc.

SUPPLEMENTARY INFORMATION: This investigation is being conducted pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). Under the Commission's rules, the presiding officer's initial determination will become the determination of the Commission thirty (30) days after the date of its service upon the parties, unless the Commission orders review of the initial determination. The initial determination in this matter was served upon the parties on April 10, 1989.

Copies of the initial determination, the settlement agreement, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in

the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–252–1000. Hearing impaired individuals are advised that information on this matter can be obtained by contracting the Commission's TDD terminal on 202–252–1810.

Written Comments:

Interested persons may file written comments with the Commission concerning termination of the aforementioned respondents. The original and 14 copies of all such comments must be filed with the Secretary to the Commission, 500 E Street, SW., Washington, DC 20436, no later than 10 days after publication of this notice in the **Federal Register**. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment. Such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why confidential treatment should be granted. The Commission will either accept the submission in confidence or return it.

FOR FURTHER INFORMATION CONTACT: Rudy J. Dionne, Office of the Secretary, U.S. International Trade Commission, telephone 202–252–1805.

By order to the Commission.

Issued: April 7, 1989.

Kenneth R. Mason,

Secretary.

[FR Doc. 89–9953 Filed 4–19–89; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337–TA–284]

Certain Electric Power Tools, Battery Cartridges, and Battery Chargers; Decision Not To Review Initial Determinations

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the following initial determinations ("IDs") issued by the presiding administrative law judge ("ALJ") in the subject investigation: Order No. 83 granting a motion for partial termination of the subject investigation, i.e., termination of the investigation insofar as it pertains to respondent-intervenor The Robert Bosch-Power Tool Corporation ("Bosch"); Order No. 84 declaring the investigation "more complicated" and extending the deadline for the ALJ to issue an ID on whether the respondents have violated section 337 of the Tariff Act of 1930; and Order No. 85 finding certain respondents in default.

FOR FURTHER INFORMATION CONTACT: P. N. Smithey, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–252–1061.

SUPPLEMENTARY INFORMATION:

Background

The subject investigation is being conducted to determine whether there is a violation of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337 (1982), as amended by section 1342 of the Omnibus Trade and Competitiveness Act of 1988, Pub. L. No. 100–418, 102 Stat. 1107 and 1212–1216 (1988)) in the importation or sale of certain electric power tools, battery cartridges, and battery chargers from Taiwan. The complainants are Makita U.S.A., Inc. ("Makita"), and its subsidiary, Makita Corporation of America ("Makita"). There are 31 respondents and 1 respondent-intervenor. Makita's complaint alleges that each respondent has engaged in 1 or more of the following unfair acts or unfair methods of competition in the importation or sale of the accused Taiwanese merchandise: Infringement of Makita's common-law or registered trademarks; false representation; false advertising; passing off. *See* 53 FR 31112 (Aug. 17, 1988) as amended by 53 FR 47586 and 47587 (Nov. 23, 1988); 54 FR 6181 (Feb. 8, 1989).

On March 6, 1989, the ALJ filed an ID (Order No. 84) *sua sponte* declaring the investigation "more complicated" on the basis of (1) the complexity of the issues, (2) the number of parties, (3) the time required for the evidentiary hearing, and (4) the size of the administrative record. The ID also ordered a two-and-one-half week extension of the ALJ's administrative deadline for issuing a final ID concerning the alleged violation of section 337 by the respondents.

On March 6, 1989, the ALJ also issued an ID (Order No. 83) granting a motion for termination of the investigation as to respondent-intervenor Bosch on the basis of its settlement agreement with Makita. *See* 54 FR 10741 (March 15, 1989).

On March 9, 1989, the ALJ filed an ID (Order No. 85) finding certain Taiwanese respondents in default for their failure to respond to the complaint and notice of investigation and to certain orders issued by the ALJ. Those respondents are Honworld International Inc., Homogene Corp., Famous Overseas Corporation, New Golden Star Electric Works, Ltd., and Jiang Charng Machinery Works.

No party filed a petition for review of the IDs, and the Commission determined that there was no basis for ordering a review on its own motion. *See* interim Commission rule 210.55, 53 FR 33043 and 33071 (Aug. 29, 1988) (to be codified at 19 CFR 210.55). By virtue of the Commission's determination not to review the IDs, they have become the Commission's final determinations on the matters in question. *See* interim Commission rule 210.53(h), 53 FR 33043 and 33070 (Aug. 29, 1988) (to be codified at 19 CFR 210.53(h)).

As a result of being declared "more complicated," the 18-month statutory deadline for the Commission to conclude the investigation is January 17, 1990. *See* 19 U.S.C. 1337(b)(1) (1982), as amended by section 1342(b) of the Omnibus Trade and Competitiveness Act of 1988, Pub. L. No. 100–418, 102 Stat. 1107 and 1215 (1988)). *See also* interim Commission rules 210.59(a), 53 FR 33043 and 33072 (Aug. 29, 1988) (to be codified at 19 CFR 210.59(a)). The Commission can, neverthelesss, adopt a shorter administrative deadline if it wishes to. *See* interim Commission rule 210.2, 53 FR 33043 and 33056 (Aug. 29, 1989) (to be codified at 19 CFR 210.2). The Commission has therefore adopted a tentative administrative deadline of September 18, 1989. The Commission plans to complete the investigation by that date, unless circumstances develop that would make the deadline impracticable for the parties and/or the Commission.

Public Inspection

Copies of the IDs, the underlying motions, responses, and orders, and all other nonconfidential documents on the record of the investigation are available for public inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Docket Section, Room 112, Washington, DC 20436, telephone 202–252–1000. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission TDD terminal on 202–252–1810.

By Order of the Commission.

Issued: April 7, 1989.

Kenneth R. Mason,

Secretary.

[FR Doc. 89–9454 Filed 4–19–89; 8:45 am]

BILLING CODE 7020–02–M

[Investigation Nos. 731-TA-406 and 408 (Final)]

Electrolytic Manganese Dioxide From Greece and Japan

Determinations

On the basis of the record [1] developed in the subject investigations, the Commission determines, pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b) (the Act), that an industry in the United States is materially injured by reason of imports from Greece [2] and Japan of electrolytic manganese dioxide (EMD),[3] provided for in subheading 2820.10.00 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce to be held sold in the United States at less than fair value (LTFV).

Background

The Commission instituted these investigations effective November 14, 1988, following preliminary determinations by the Department of Commerce that imports of EMD from Greece and Japan were being sold in the United States at LTFV within the meaning of section 731 of the Act (19 U.S.C. 1673). Notice of the institution of the Commission's investigations and of the public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of December 28, 1988 (53 FR 52516). The hearing was held in Washington, DC, on March 9, 1989, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its report on these investigations to the Secretary of Commerce on April 10, 1989. A public version of the Commission's report, Electrolytic Manganese Dioxide from Greece and Japan (Investigations Nos. 731-TA-406 and 408 (Final)), USITC Publication 2177, April 1989, contains the views of the Commission and information developed during the investigations.

[1] The record is defined in sec. 207.2(i) of the Commission's Rules of Practice and Procedure (19 CFR 207.(i)).

[2] Chairman Brunsdale and Vice Chairman Cass determine that an industry in the United States is not materially injured or threatened with material injury, and the establishment of an industry in the United States is not materially retarded, by reason of LTFV imports from Greece.

[3] The product covered by these investigations is manganese dioxide (Mn02) that has been refined in an electrolysis process.

By Order of the Commission:

Kenneth R. Mason,

Secretary.

Issued: April 11, 1989.

[FR Doc. 89-9452 Filed 4-19-89; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-276]

Certain Erasable Programmable Read Only Memories, Components Thereof, Products Containing Such Memories, and Processes for Making Such Memories; Commission Decision Denying Emergency Petition

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Commission has denied an emergency petition for a stay of its remedial orders in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Judith M. Czako, Esq., Ofice of the General Counsel, U.S. International Trade Commission, telephone 202-252 1093.

SUPPLEMENTARY INFORMATION: The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930 (19 U.S.C. 1337).

On March 21, 1989, respondent Atmel filed an "Emergency Petition under Rules 210.60 and 211.57 and Paragraph X of the Commission's Cease and Desist Order for a Stay" (hereinafter "Atmel Petition"). Atmel requested that the Commission stay the effective date of the cease and desist order issued to Atmel until the President has acted, or until the end of the 60-day Presidential review period. Atmel also requested that the Commission stay the limited exclusion order as it applies to Atmel or, at a minimum, decrease the bond required under the limited exclusion order during the 60-day Presidential review period.

On March 25, 1989, the Commission issued a series of questions to Atmel concerning the information contained in the Atmel Petitioon in an effort to create an adequate record on which to base its consideration of the Atmel Petition. Atmel filed its responses to the Commission's questions on March 27, 1989.

Having considered the Atmel Petition, Atmel's answers to the Commission's questions, and all other submissions concerning the Atmel Petition, the Commission has determined to deny the Atmel Petition.[1] The Commission will issue an Opinion in support of its Order shortly.

Notice of this investigation was published in the **Federal Register** of September 16, 1987 (52 FR 35004).

Copies of the Commission's Order, the nonconfidential version of the opinion to be issued, and all other nonconfidential documents filed in connection with this investigation are or will shortly be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202-252-1000. Hearing-impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal on 202-252-1810.

By Order of the Commission.

Kenneth R. Mason,

Secretary.

Issued: April 7, 1989.

[FR Doc. 89-9455 Filed 4-19-89; 8:45 am]

BILLING CODE 7020-02-M

Investigation With Respect to the Operation of the Harmonized System Subtitle of the Omnibus Trade and Competitiveness Act of 1988

AGENCY: United States International Trade Commission.

ACTION: Institution of investigation and request for public comment.

SUMMARY: This notice is intended to describe the procedures for a Commission investigation of the operation during 1989 of the Harmonized System subtitle of the Omnibus Trade and Competitiveness Act of 1988 (the Act), as required by section 1216 of the Act.

EFFECTIVE DATE: March 14, 1989.

FOR FURTHER INFORMATION CONTACT: Eugene A. Rosengarden, Director, Office of Tariff Affairs and Trade Agreements (202-252-1592) or Leo A. Webb (202-2562-1599).

Background: Section 1216 of the Act (Pub. L. 100-418) directs the Commission, in consultation with other appropriate Federal agencies, to

[1] Chairman Brunsdale and Vice Chairman Cass dissent from this determination in one respect. They would grant the Atmel Petition to a limited extent by modifying the cease and desist order that has been issued to Atmel to permit Atmel to import the subject EPROMs during the Presidential review period under the bonding provisions contained in the limited exclusion order and to sell EPROMs imported under bond, but not previously imported EPROMs.

prepare, and submit to the Congress and to the President, a report regarding the operation of the Harmonized System subtitle of the Act during the 12-month period commencing on January 1, 1989. The Commission instituted investigation No. 332–274, on March 14, 1989, pursuant to section 332(b) of the Tariff Act of 1930 (19 U.S.C. 1332(b) to fulfill the requirements of section 1216 of the Act. The report will be submitted to the Congress and to the President by June 20, 1990.

Written submissions: Interest parties (including other Federal agencies) are invited to submit written statements concerning the subject of the report. More specifically, interested parties are requested to advise the Commission of their views on the operation of the Harmonized System subtitle of the Act during 1989 and, in particular, the Harmonized Tariff Schedule of the United States, and to suggest changes which, in their opinion, would improve its operation. Such statements must be submitted by no later than January 31, 1990, in order to be considered by the Commission. The Commission may subsequently schedule a public hearing in connection with this investigation if, in its opinion, the information submitted warrants such action.

The Commission will include copies (or summaries, as appropriate) of written statements in its report to the Congress and to the President. Commerical or financial information which a party desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of section 201.6 of the Commission's rules of practice and procedure (19 CFR 201.6). All written submissions, except for confidential business information, will be made available for inspection by interested parties. All submissions should be addressed to the Secretary, U.S. International Trade Commission, 500 E St. SW., Washington, DC 20436.

Hearing-impaired persons are advised that information on this matter can be obtained by contacting our TDD terminal on (202) 252–1810.

By Order of the Commision.

Kenneth R. Mason,

Secretary.

Issued: April 12, 1989.

[FR Doc. 89–9499 Filed 4–19–89; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337–TA–281]

Certain Recombinant Erythropoietin; Commission Decision to Dismiss Complaint for Lack of Subject Matter Jurisdiction and to Terminate the Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to dismiss the complaint for lack of subject matter jurisdiction and to terminate the investigation.

ADDRESS: Copies of the Commission's Order, the Commission's opinions, the presiding ALJ's final initial determination (ID), and all other non-confidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–252–1000.

FOR FURTHER INFORMATION CONTACT: Jean Jackson, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–252–1104. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–252–1810.

SUPPLEMENTARY INFORMATION: On February 10, 1988, the Commission instituted an investigation to determine whether there is a violation of section 337 of the Tariff Act of 1930 in the importation or sale of certain recombinant erythropoietin by reason of alleged unfair acts in the importation into and sale in the United States of recombinant erythropoietin manufactured abroad by a process which, if practiced in the United States, would infringe claims 2, 4–7, 23–25, and 27–29 of U.S. Letters Patent 4,703,008. The Commission named Chugai Pharmaceutical Co., Ltd. of Japan and Chugai, USA, Inc. of New York City as respondents. During the investigation, the Commission granted a motion filed by The UpJohn Company of Kalamazoo, Michigan, to intervene as a respondent.

On January 10, 1989, the presiding administrative law judge issued his final ID finding no violation of section 337. On February 27, 1989, the Commission determined to review the ID in its entirety.

This action is taken under authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and § 210.56 of the Commission's interim rules (53 FR 33071 (Aug. 29, 1988)).

By Order of the Commission.

Kenneth R. Mason,

Secretary.

Issued: April 10, 1989.

[FR Doc. 89–9456 Filed 4–19–89; 8:45 am]

BILLING CODE 7020–02–M

Certain Final Judicial Decisions Relating to Tariff Treatment

AGENCY: United States International Trade Commission.

ACTION: Institution of investigation and request for public comment.

SUMMARY: This notice is intended to describe the procedures for a Commission investigation of certain final judicial decisions as required by subsection 1211(d)(2)(B) of the Omnibus Trade and Competitiveness Act of 1988 (the Act).

EFFECTIVE DATE: March 14, 1989.

FOR FURTHER INFORMATION CONTACT: Eugene A. Rosengarden, Director, Office Tariff Affairs and Trade Agreements (202–252–1592) of Leo A. Webb (202–252–1599).

Background and scope of investigation: The Commission instituted investigation No. 332–273, on March 14, 1989, under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)), as required by subsection 1211(d)(2)(B) of the Act (Pub. L. 100–418). Subsection 1211(d)(2)(B) directs the Commission to initiate an investigation under section 332 of the Tariff Act of 1930 at the earliest practicable date after the effective date of the Harmonized Tariff Schedule of the United States (HTS) of any protest filed under section 514 of the Tariff Act 1930 (19 U.S.C. 1514) or any petition by an American manufacturer, producer, or wholesaler under section 516 of such Act (19 U.S.C. 1516), covering articles entered before the effective date of the HTS, which protest or petition is sustained in whole or in part by a final judicial decision which is published during the two-year period beginning on February 1, 1988, and which would have affected tariff treatment under the HTS if the decision had been published during the period of the conversion of the Tariff Schedules of the United States (TSUS) into the format of the Harmonized System-based HTS.

The Act directs the Commission to report the results of this investigation to the President, the Committee on Ways and Means of the U.S. House of Representatives, and the Committee on

Finance of the U.S. Senate no later than September 1, 1990. The Commission is directed to recommend those changes to the HTS that the Commission would have recommended if such final judicial decisions had been made before the conversion of the TSUS into the format of the Harmonized System. Thereafter, the President is directed to review all changes recommended by the Commission and, as soon as practicable, to proclaim any such changes which the President determines are necessary or appropriate to conform the HTS to such final judicial decisions.

Written submissions: Interested parties are invited to submit written statements concerning the investigation. More specifically, interested parties are requested to notify the Commission of particular final judicial decisions which they believe are within the scope of this investigation and to suggest changes to the HTS which they believe are necessary or appropriate to conform the HTS to such decisions.

A final judicial decision within the scope of this investigation is a final judicial decision that: (1) Sustains, in whole or in part, a protest filed under section 514 of the Tariff Act of 1930 or a petition by an American manufacturer, producer, or wholesaler under section 516 of such Act, covering articles entered before the effective date of the HTS; (2) is published during the two-year period beginning on February 1, 1988; and (3) would have affected tariff treatment under the HTS if the decision had been published during the period of the conversion of the TSUS to the HTS. For purposes of this investigation, a "final judicial decision" is a judgment of the Court of International Trade or the Court of Appeals for the Federal Circuit, which is not subject to further review or collateral attack. Interested parties who notify the Commission of such decisions shall state, as a part of the written submission, that, to the best of their information and belief, such decisions are not subject to further review or collateral attack.

The Commission will publish the suggested changes to the HTS for public comment and will hold a hearing, if deemed appropriate by the Commission.

Commerical or financial information which a party desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of § 201.6 of the Commission's rules of practice and procedure (19 CFR 201.6). All written submissions, except for confidential business information, will be made available for inspection by interested parties. To be assured of consideration by the Commission, written requests suggesting changes to the HTS must be received by the close of business on June 1, 1989, if the final judicial decision concerned is published prior to January 1, 1989, or within 45 days of the date when the final judicial decision is published, if such decision is published on or after January 1, 1989 and before February 1, 1990. Failure to respond by the indicated dates may preclude consideration of any such decision by the Commission. All submissions should be addressed to the Secretary, U.S. International Trade Commission, 500 E St. SW., Washington, DC 20436.

Hearing-impaired persons are advised that information on this matter can be obtained by contacting our TDD terminal on (202) 252-1810.

By Order of the Commission.

Kenneth R. Mason,

Secretary.

Issued: April 12, 1989.

[FR Doc. 89-9450 Filed 4-19-89; 8:45 am]

BILLING CODE 7020-02-M

DEPARTMENT OF JUSTICE

Lodging of a Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on April 7, 1989, a proposed Consent Decree in *United States* v. *Landfill, Inc., et al.*, Civil Action No. 88-Z-1714 (D. Colo.), was lodged with the United States District Court for the District of Colorado. This proposed Consent Decree is between the United States and AMF, Incorporated, Public Service Company of Colorado, Mesa Sand and Gravel, Inc., and James H. Kean (an officer, director, and shareholder of Mesa). This group of defendants is referred to herein as the "Second Settlors".

The United States brought suit on October 21, 1988, pursuant to sections 106 and 107 of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA") to compel the cleanup of the Marshall/Boulder Landfill near Marshall, Colorado, and the reimbursement of the United States for its response costs associated with the site. The defendants include Landfill, Inc., The City of Boulder, Cowdrey Corporation, and several individuals who own portions of the site. These defendants are referred to herein as the "First Settlors". The four additional defendants (the Second Settlors) are three corporations which allegedly disposed of hazardous substances at the site, and an individual who was an officer, director, and shareholder of one of the corporations.

A partial Consent Decree was lodged with the Complaint. It provided for the First Settlors to design and undertake remedial action chosen by the United States Environmental Protection Agency ("EPA"), and described in EPA's Record of Decision ("ROD") entered September 26, 1986. The remedy selected by EPA in its ROD consists of: fencing, regrading, and revegetating the Site to restrict access and minimize infiltration; collecting contaminated groundwater by a series of drains partially surrounding the site to eliminate the off-site transport of contaminants via alluvial groundwater; treating the groundwater by air stripping with off-gas carbon adsorption to reduce concentrations of volatile organics in the groundwater to the most conservative of the applicable or relevant and appropriate standards and criteria (and to prevent the escape of volatile organics into the atmosphere); and monitoring to assess the groundwater and surface water to assess the effectiveness of the selected remedial alternative. In addition, the Decree signed by the First Settlors provides that they shall reimburse the United States $200,000.

The Decree with the First Settlors left the United States with an estimated shortfall of $550,000 for past costs and anticipated future costs, such as oversight costs for the remedial action. The Second Settlors have now agreed, through a proposed Consent Decree, to reimburse the United States for $485,000 of its past and anticipated future response costs. Given the two Decrees described herein, the United States has obtained a full resolution of this litigation at 98.7% of the potential exposure to the Superfund.

The proposed Decree between the United States and the Second Settlors is a straightforward document requiring the Second Settlors to pay a total of $485,000 to the Superfund, in return for covenants not to sue provided for in section 122(f) of CERCLA, 42 U.S.C. 9622(f). The Department of Justice will receive for a period of thirty days from the date of this publication comments relating to the proposed Complaint and Consent Decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Landfill, Inc.*, DOJ

Ref. No. 90-11-2-195. The proposed Complaint and Consent Decree may be examined at the Office of the United States Attorney, District of Colorado, Suite 1200, Federal Building, 1961 Stout Street, Denver, Colorado, 80294. Copies of the Complaint and Consent Decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice, Room 1517, Ninth and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice. Copying costs are $.10 per page, and the Consent Decree is 14 pages long, so a request for a copy of the Consent Decree must be accompanied with a check or money order made out to the Treasurer of the United States for $1.40.

Donald A. Carr,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 89-9423 Filed 4-19-89; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree; William K. Martin et al.

In accordance with Departmental policy, 28 CFR 50.7, and pursuant to section 122(i) of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA") as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. 9622(i), notice is hereby given that on March 15, 1989, a proposed Partial Consent Decree in *United States* v. *William K. Martin, et al.* ("BMF/Petro Products"), was lodged with the United States District Court for the Northern District of Alabama.

The Complaint in this case seeks cost recovery pursuant to section 107 of CERCLA, 42 U.S.C. 9607. The Complaint was filed on March 15, 1989, against William K. Martin ("Martin"), the past owner and operator of the site in question, and several generators who arranged for transportation of waste solvents and other materials to the BMF/Petro Products reclamation facility in Athens, Alabama. The generators named as defendants include: Whittaker Corporation; GTE Communication Systems Corporation ("GTE"); Murray Ohio Manufacturing Co. ("Murray"); Reynolds Metal Co. ("Reynolds"); Dunlop Tire & Rubber Co. ("Dunlop"); and Amana Refrigeration Co. ("Amana").

The site involved in the case is a 20 acre tract of land containing several chicken houses just outside of Athens, Alabama. The site was used by Martin to store hazardous materials from the Petro Products facility beginning in August 1979. In October of 1983, the Environmental Protection Agency ("EPA") conducted an immediate removal of hazardous substances at the site. EPA incurred costs of $302,119.54 in connection with its response actions at the site.

Under the proposed Partial Consent Decree, defendants Murray, Dunlop, Amana and Reynolds (the "settling defendants") have agreed to pay $97,903.90 to the United States in exchange for the United States' covenant not to sue the settling defendants for recovery of costs incurred in connection with EPA's past response actions at the site. Defendants Martin, Whittaker and GTE are not parties to the Partial Consent Decree.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Consent Decree. The Department of Justice will consider any comments in determining whether or not to consent to the proposed settlement and may withdraw its consent to the proposed settlement if such comments disclose facts or considerations which indicate that the proposed Consent Decree is inappropriate, improper or inadequate. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, U.S. Department of Justice, Washington, DC 20530, and should refer to *United States* v. *William K. Martin, et al.*, DOJ Ref. No. 90-11-3-324.

The proposed Consent Decree may be examined at the Office of the United States Attorney for the Northern District of Alabama, 200 Federal Building, 1800 5th Ave., Birmingham, Alabama 35203, and the Office of the Regional Counsel, Environmental Protection Agency, 345 Courtland Street, NE., Atlanta, Georgia 30365. Copies of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division, Room 1521, Department of Justice, 9th Street and Pennsylvania Avenue, NW., Washington, DC 20530. In requesting a copy, please enclose a check in the amount of $7.50 payable to the Treasurer of the United States.

Donald A. Carr,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 89-9525 Filed 4-19-89; 8:45 am]

BILLING CODE 4410-10-M

Antitrust Division

Notice Pursuant to the National Cooperative Research Act of 1984—CAD Framework Initiative, Inc.; Correction

In notice document 89-5642 concerning CAD Framework Initiative, Inc. appearing in the issue of Monday, March 13, 1989 at 54 FR 10456, make the following correction: "Objective Design, Inc." should read "Object Design, Inc."

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 89-9421 Filed 4-19-89; 8:45 am]

BILLING CODE 4410-01-M

Notice Pursuant to the National Cooperative Research Act of 1984—Corporation for Open Systems International

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), the Corporation for Open Systems International ("COS") has filed an additional written notification simultaneously with the Attorney General and the Federal Trade Commission on March 15, 1989, disclosing changes in the membership of COS. The additional written notification was filed for the purpose of extending the protections of section 4 of the Act limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

On May 14, 1986, COS filed its original notification pursuant to section 6(a) of the Act. The Department of Justice (the "Department") published a notice in the **Federal Register** pursuant to section 6(b) of the Act on June 11, 1986, 51 FR 21260. On August 6, 1986, September 30, 1986, January 2, 1987, March 24, 1987, June 12, 1987, July 23, 1987, July 31, 1987, October 5, 1987, October 23, 1987, November 16, 1987, January 12, 1988, February 9, 1988, May 2, 1988, and October 20, 1988, COS filed additional written notifications. The Department published notices in the **Federal Register** in response to these additional notifications on September 4, 1986 (51 FR 31735), October 28, 1986 (51 FR 39434), February 13, 1987 (52 FR 4671), April 24, 1987 (52 FR 13769), July 21, 1987 (52 FR 27473), October 7, 1987 (52 FR 37539), November 9, 1987 (52 FR 43138), December 4, 1987 (52 FR 46129), December 15, 1987 (52 FR 47642), December 18, 1987 (52 FR 48164), February 19, 1988 (53 FR 5060), March 8, 1988 (53 FR 7411), and June 30, 1988 (FR

24811), and November 25, 1988 (53 FR 47773), respectively.

On January 1, 1989, IDACOM became a member of COS. On February 1, 1989, GSI Danet, Inc., Soft-Switch Inc., and Concord Communications Inc., became members of COS. On January 1, 1989, ADC Telecommunications, Aetna Life & Casualty, Dow Chemical Company, Excelan, General Electric Company, Gould Inc., Harris Inc., Telenet Communications, Telex Computer Products, VANCE Systems, and VISA International ceased their membership in COS.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 89-9422 Filed 4-19-89; 8:45 am]

BILLING CODE 4410-01-M

Pursuant to the National Cooperative Research Act of 1984—Petroleum Environmental Research Forum

Notice is hereby given that, on March 21, 1989, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), the Petroleum Environmental Research Forum ("PERF") filed written notifications on its own behalf and on behalf of the members of PERF simultaneously with the Attorney General and with the Federal Trade Commission disclosing a change in the members of PERF. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the notifications stated that the membership in PERF of Occidental Petroleum Corporation, now known as OXY USA Inc., has terminated.

Accordingly, at present the members of PERF are those companies listed below:

Amerada Hess Corporation, 1 Hess Plaza, Woodbridge, New Jersey 07095
Amoco Oil Company, Post Office Box 400, Mail Station H-9, Naperville, Illinois 60566
Ashland Oil Inc., Post Office Box 391, Ashland, Kentucky 41114
Atlantic Richfield Company, 515 South Flower Street, AP 33 Los Angeles, California 90071
BP America (formerly known as Standard Oil Company of Ohio), 4440 Warrensville Center Road, Cleveland, Ohio 44128
Chevron Research Company, Post Office Box 1627, Richard, California 94802-0627
Conoco Inc., Petroleum R&D, Post Office Box 1267, Ponca City, Oklahoma 74603
Exxon Research and Engineering Company, Route 22 East, Clinton Township, Annandale, New Jersey 08801
Kerr-McGee Corporation, Post Office Box 25861, Oklahoma City, Oklahoma 73125
Koch Refining Company, Post Office Box 64596, St. Paul, Minnesota 55164
Marathon Oil Company, 539 South Main Street, Findlay, Ohio 45840
Mobil Research and Development Corporation, Paulsboro Research Laboratory, Billingsport Road, Paulsboro, New Jersey 08066
Murphy Oil USA, Inc., 200 Peach Street, El Dorado, Arkansas 71730
Pennzoil Company, Pennzoil Place, Post Office Box 2967, Houston, Texas 77252-2967
Phillips Petroleum Company, 468 Frank Phillips Building, Bartlesville, Oklahoma 74004
Shell Development Company, Post Office Box 1380, Houston, Texas 77251-1380
Sun Company, Inc., Sun Refining and Marketing Company, Post Office Box 1135, Marcus Hook, Pennsylvania 19061-0835
Texaco Refining & Marketing Inc., Post Arthur Research Laboratories, Post Office Box 1608, Port Arthur, Texas 77641
Union Oil Company of California, 376 South Valencia Avenue, Post Office Box 76, Brea, California 92621

On February 21, 1986, PERF filed its original notification on its own behalf and on behalf of the members of PERF pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on March 14, 1986 (51 FR 8903). On May 6, 1986, May 27, 1986, June 23, 1986 and February 3, 1989, PERF filed additional written notifications. The Department published notices in the Federal Register in response to these additional notifications on June 9, 1986 (51 FR 20897), June 19, 1986 (51 FR 22365), July 17, 1986 (51 FR 25957), June 19, 1986 (51 FR 22365), July 17, 1986 (51 FR 25957) and March 1, 1989 (54 FR 8607), respectively.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 89-9524 Filed 4-19-89; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 89-30; Exemption Application No. D-7387 et al.]

Grant of Individual Exemptions; The Equity Real Estate Account of John Hancock Mutual Life Insurance Co., et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) for certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, DC. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicant have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of pendency were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) The are protective of the rights of the participants and beneficiaries of the plans.

The Equity Real Estate Account (Account) of John Hancock Mutual Life Insurance Company, Located in Boston, Massachusetts

[Prohibited Transaction Exemption 89–30; Exemption Application No. D–7387]

Exemption

The restrictions of section 406(b)(2) of the Act shall not apply, effective December 30, 1988 through December 31, 1990, to the sale and transfer of certain real estate investments by the Account to John Hancock Property Fund, a separate account of John Hancock Mutual Life Insurace Company, provided that the terms of sale are not less favorable to the Acount than those terms obtainable in an arm's length transaction with an unrelated party at the time of execution of the transaction.

For a more complete statement of the facts and representatations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on February 14, 1989 at 54 FR 6780.

EFFECTIVE DATE: This exemption will be effective from December 30, 1988 through December 31, 1990.

FOR FURTHER INFORMATION CONTACT: Alan H. Levitas of Department, telephone (202) 523–8194. (This is not a toll-free number.)

ServiceMaster Profit Sharing, Savings and Retirement Plan (the Plan), Located in Downers Grove, Illinois

[Prohibited Transaction Exemption 89–31; Exemption Application No. D–7416]

Exemption

The restrictions of Sections 46(a), (b)(1) and (b)(2) and 407 of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to: 1) The Plan's proposed one-time acquisition from ServiceMaster Limited Partnership (the Employer), the sponsor of the Plan and, as such, a party in interest with respect to the Plan, of the Employer's limited partnership units (the Units) at a price per Unit which is the lower of: a) $22.50; or b) the closing price of the Units as publicly traded on the New York Stock Exchange on the date of the purchase; provided that the Plan acquire no greater than 25% of its assets in such Units in its one time purchase thereof from the Employer; 2) the Plan's proposed holding of such Units; 3) the contribution to the Plan by the Employer of an irrevocable put option (the Put Option) which permits the Plan to sell the Units to the Employer at a price per Unit of $22.50; and (4) the holding of said Put Option by the Plan.

Temporary Nature of the Exemption: The exemption will expire ten years from the date the exemption is granted.

For purposes of technical accuracy, the Department has clarified transaction: (1) Contained in the notice of proposed exemption (the Notice) published on February 14, 1989 at 54 FR 6781 to read as two separate transactions, namely the acquisition and the holding of Units by the Plan.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the Notice.

For further information contact: Mrs. B.S. Scott of the Department, telephone (202) 523–8194. (This is not a toll-free number.)

Plessey Dynamics Employees Retirement Plan (the Plan), Located in Hillside, New Jersey

[Prohibited Transaction Exemption 89–32; Exemption Application No. D–7473]

Exemption

The restrictions of sections 406(a) and 406(b) (1) and (2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Coee, shall not apply to the cash sale of certain real property from the Plan to Plessey Incorporated, a party in interest with respect to the Plan, for the greater of $675,000 or the fair market value for the property at the time of sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on February 14, 1989 at 54 FR 6782.

Effective Date: This exemption is effective as of March 31, 1989.

For further information contact: Paul Kelty of the Department, telephone (202) 523–8883. (This is not a toll-free number.)

United Artists Communications, Inc. (Rowley United Division) Retirement Plan (the Plan), Located in Dallas, Texas

[Prohibited Transaction Exemption 89–33; Exemption Application No. D–7491]

Exemption

The restrictions of sections 406(a) and 406(b) (1) and (2) of the Act and the sanctions resulting from the applications of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the sale of certain real property from the Plan to United Artists Communications, Inc., a party in interest with respect to the Plan, provided the Plan receives no less than fair market value for the property at the time of sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on February 14, 1989, at 54 FR 6783.

For further information contact: Paul Kelty of the Department, telephone (202) 523–8883. (This is not a toll-free number.)

Herbert S. Kaufman, M.D. Pension Plan (the Plan), Located in San Francisco, California

[Prohibited Transaction Exemption 89–34; Exemption Application No. D–7759]

Exemption

The restrictions of sections 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the applications of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (D) of the Code, shall not apply to the cash sale by the Plan of a parcel of unimproved real property (the Land) located in Napa, California to Herbert S. Kaufman, a party in interest with respect to the Plan; provided that the terms of the sale are not less favorable to the Plan than similar terms negotiated at arm's length between unrelated third parties and provided further that the sales price is not less than fair market value of the Land.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on February 24, 1989 at 54 FR 8024.

For further information contact: Angelena C. Le Blanc of the Department, telephone (202) 523–8883. (This is not a toll-free number.)

Leanin' Tree Publishing Co., Profit Sharing Trust (the Plan), Located in Boulder, Colorado

[Prohibited Transaction Exemption 89–35; Exemption Application No. D–7787]

Exemption

The restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the

Code, shall not apply to a cash sale by the Plan of two unimproved parcels of real property and an outlot which is an addition to one of the parcels to Edward P. Trumble, a party in interest with respect to the Plan, provided that the Plan receives the greater of $671,000 or the fair market value at the time of the sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on February 24, 1989 at 54 FR 8024/8025.

For further information contact Ekaterina A. Uzlyan of the Department at (202) 523-8194 (this is not a toll free number).

Barber and Lundberg Profit Sharing Plan and Trust (the Plan), Located in Tulsa Oklahoma

[Prohibited Transaction Exemption 89-36; Exemption Application No. D-7788]

Exemption

The restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to a loan, not to exceed $300,000, by the Plan to Barber and Lundberg, Inc., the sponsor of the Plan; provided that all terms of such loan are at least as favorable to the Plan as those which the Plan could obtain in an arm's-length transaction with an unrelated party.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to this notice of proposed exemption published on February 14, 1989 at 54 FR 6785.

For Further Information Contact: Ronald Willett of the Department, telephone (202) 523-8881. (This is not a toll-free number).

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 14th day of April 1989.

Robert J. Doyle,

Director of Regulations and Interpretations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 89-9484 Filed 4-19-89; 8:45 am]

BILLING CODE 4510-29-M

[Application No. D-7673 et al.]

Proposed Exemptions; Local 705 International Brotherhood of Teamsters Pension Fund et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

DATE: *Written comments and hearing requests.* All interested persons are invited to submit written comments or requests for a hearing on the pending exemptions, unless otherwise stated in the Notice of Pendency, on or before June 5, 1989. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Regulations and Interpretations, Room N-5671, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210. Attention: Application No. stated in each Notice of Pendency. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N-5507, 200 Constitution Avenue, NW., Washington, DC 20210.

Notice to interested persons. Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department on or before May 5, 1989. Such notice shall include a copy of the notice of pendency of the exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of pendency are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Local 705 International Brotherhood of Teamsters Pension Fund (the Plan) Located in Chicago, Illinois

[Application No. D-76773]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c) (2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a), 406(b)(1) and (b) (2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the

Code, shall not apply to the proposed purchase by the Plan of certain real property (the Land) from the Local 705 Building Corporation (the Corporation), a party in interest with respect to the Plan; provided that all terms of such transaction are at least as favorable to the Plan as those which the Plan could obtain in an arm's-length transaction with an unrelated party.

Summary of Facts and Representations

1. The Plan is a multi-employer defined benefit pension plan established under section 302(c) of the Labor Management Relations Act of 1947, as amended, by collective bargaining between Local 705 of the Truck Drivers, Oil Drivers, Filling Station and Platform Workers Union, International Brotherhood of Teamsters (the Union) and representatives of Chicago-area employers (the Employers) of members of the Union. The Plan had approximately 14,000 participants and total assets of approximately $660,000,000 as of June 22, 1987. Investment decisions with respect to Plan assets are made by the Plan's eight trustees, four of whom are designated by the Employers and four of whom are designated by the Union. The Corporation is a tax-exempt non-profit corporation wholly owned by the Union for the exclusive purpose of holding and managing real property assets of the Union.

2. Among the assets of the Plan is a multi-tenant office building (the Building) located at 300 South Ashland Avenue in Chicago, Illinois. The Building is owned and managed on behalf of the Plan by the West Side Realty Corporation (West Side), a tax-exempt non-profit corporation which is wholly owned by the Plan for the exclusive purpose of holding and managing real property assets of the Plan. The Building is situated on the Land, a 2.815 acre parcel owned by the Corporation. West Side has leased the Land (the Land Lease) from the Corporation since 1967, having constructed the Building thereon in 1968 for approximately $2,200,000 at a time when total Plan assets were valued at approximately $38,000,000. As of February 19, 1987, the Land and Building had a fair market value of $3,950,000, according to an appraisal conducted by Seay and Thomas Appraisers, Inc. (Seay and Thomas), professional real estate appraisers in Chicago, Illinois.

Included among the tenants in the Building is the Union, which leases office space therein (the Union Lease) from West Side. The Trustees represent that the Union's lease of office space from the Plan through West Side under the Union Lease constitutes a lease which satisfies the requirements of prohibited transaction class exemptions 76-1 (PTE 76-1, 41 FR 12740, March 26, 1976) and 77-10 (PTE 77-10, 42 FR 33918, July 1, 1977) and that such lease of space is exempt, therefore, from the prohibitions of section 406 of the Act.[1]

The Trustees also represent that West Side's lease of the Land from the Corporation under the Land Lease satisfied the requirements of section 414(c)(2) of the Act and that such lease was exempt, therefore, until June 30, 1984 from the prohibitions of section 406 of the Act.[2] However, the Trustees acknowledge that the Land Lease has continued after June 30, 1984 without any exemption from the prohibitions of 406 of the Act. In order to terminate the Land Lease as an ongoing prohibited transaction, the Trustees propose that West Side purchase the Land on behalf of the Plan from the Corporation. An exemption is requested to permit such purchase transaction under the terms and conditions described herein.

3. West Side will pay the Corporation cash for the Land in the amount of no more than the Land's fair market value as of the sale date, in no event to exceed $800,000, the Land's fair market value as of February 19, 1987 according to Seay and Thomas. As of December 27, 1988, the Land's fair market value was $920,000, according to an appraisal performed for West Side by Urban Real Estate Research, Inc.) an independent real estate appraisal firm in Chicago, Illinois. The Corporation will pay all costs and expenses related to the transaction and will deliver to West Side fee simple title to the Land free and clear of all liens and encumbrances.

The Department is not proposing herein any exemptive relief for any transaction related to the Land or Building except the Corporation's proposed sale of the Land to West Side. Accordingly, the Trustees represent that, within 60 days of the final grant of the exemption proposed herein, if granted, the Corporation will pay any excise taxes which are applicable under section 4975(a) of the Code by virtue of the continuation of the Land Lease after June 30, 1984, to the date of the proposed sale transaction.

4. The interests of the Plan in the proposed transaction are represented by Berger Financial Services Corporation (the Fiduciary), a real estate investment consulting firm which represents itself to have substantial fiduciary experience under the Act. The Fiduciary states that it has served as sole real estate consultant to the Plan since 1981 and that it is independent of the Union and the Corporation. The Fiduciary represents that it has reviewed and considered all material details of the proposed transaction to determine independently whether the proposal is in the best interests of the participants and beneficiaries of the Plan. In so doing, the Fiduciary represents that it has considered the alternatives available to the Plan in dealing with the subject real property. As a result of its evalution, the Fiduciary represents that it finds of its evaluation, the Fiduciary represents that it finds that the proposed transaction is in the best interests of the Plan. The Fiduciary states that the proposed transaction will preserve and enhance the value of the Plan's interests in both the Building and the Land. The Fiduciary further states that the proposed transaction will be in accordance with governing provisions of the Plan documents and will leave the Plan assets appropriately diversified as required by the Act. According to the Fiduciary, the proposed purchase price for the Land is prudent and will constitute a purchase price not in excess of the Land's fair market value.

The Fiduciary represents that it also undertook to evaluate the rentals paid to the Corporation by West Side under the Land Lease since June 30, 1984 and that it finds that such rentals have not been in excess of the Land's fair market rental value. Finally, the Fiduciary has undertaken to monitor and oversee the transaction on behalf of the Plan through the completion of the proposed sale.

5. In summary, the applicant maintains that the criteria of section 408(a) of the Act are satisfied in the proposed transaction for the following reasons: (1) The proposed transaction will terminate an ongoing prohibited transaction between the parties; (2) The Plan, through West Side, will pay cash in the amount of no more than the fair market value of the Land as of the sale date, in no event to exceed $800,000; (3) The Corporation will pay all costs and expenses related to the proposed sale transaction; and (4) The Plan's interests in the proposed transaction are represented by the Fiduciary, which has determined that the transaction will be in the Plan's best interests, prudent, and enhancing of the Plan's interests in the Building and Land.

For Further Information Contact: Mr. Ronald Willett of the Department,

[1] The Department expresses no opinion in this exemption as to whether the Union's lease of office space under the Union Lease satisfies the requirements of PTE 76-1 and PTE 77-10.

[2] The Department expresses no opinion in this exemption as to whether West Side's lease of the Land under the Land Lease satisfied the requirements of section 414(c) (2) of the Act.

telephone (202) 523-8881. (This is not a toll-free number.)

John Deere Optional Life Insurance Plan for Salaried Employees (the Plan), Located in Moline, IL

[Application No. D-7680]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406 (a) and (b) of the Act shall not apply to the reinsurance of risks and the receipt of premiums therefrom by John Deere Life Insurance Company (JDLIC) from the insurance contracts sold by Connecticut General Life Insurance Company (CG), or another life insurance company unrelated to Deere & Company (Deere), to provide life insurance benefits to participants of the Plan, provided the following conditions are met:

(a) JDLIC—

(1) Is a party in interest with respect to the Plan by reason of a stock or partnership affiliation with Deere that is described in section 3(14) (E) or (G) of the Act,

(2) Is licensed to sell insurance or conduct reinsurance operations in at least one of the United States or in the District of Columbia,

(3) Has obtained a Certificate of Authority from the Department of Insurance of its domiciliary state, Illinois, which has neither been revoked nor suspended, and

(4)(A) Has undergone an examination by an independent certified public accountant for its last completed taxable year immediately prior to the taxable year of the reinsurance transaction; or

(B) Has undergone a financial examination (within the meaning of the law of its domiciliary State, Illinois) by the Superintendent of Insurance for the State of Illinois within 5 years prior to the end of the year preceding the year in which the reinsurance transaction occurred.

(b) The Plan pays no more than adequate consideration for the insurance contracts;

(c) No commissions are paid with respect to the direct sale of such contracts, or the reinsurance thereof; and

(d) For each taxable year of JDLIC, the gross premiums and annuity considerations received in that taxable year by JDLIC for life and health insurance or annuity contracts for all employee benefit plans (and their employers) with respect to which JDLIC is a party in interest by reason of a relationship to such employer described in section 3(14) (E) or (G) of the Act does not exceed 50 percent of the gross premiums and annuity considerations received for all lines of insurance (whether direct insurance or reinsurance) in that taxable year by JDLIC. For purposes of this condition (d):

(1) the term "gross premiums and annuity considerations received" means as to the numerator the total of premiums and annuity considerations received, both for the subject reinsurance transactions as well as for any direct sale or other reinsurance of life insurance, health insurance or annuity contracts to such plans (and their employers) by JDLIC. This total is to be reduced (in both the numerator and denominator of the fraction) by experience refunds paid or credited in that taxable year by JDLIC.

(2) all premium and annuity considerations written by JDLIC for plans which it alone maintains are to be excluded from both the numerator and denominator of the fraction.

Effective Date: If this proposed exemption is granted, it will be effective January 1, 1983.

Preamble

On August 7, 1979, the Department published a class exemption (Prohibited Transaction Exemption 79-41 (PTE 79-41), 44 FR 46365) which permits insurance companies that have substantial stock or partnership affiliations with employee benefit plans to make direct sales of life insurance, health insurance or annuity contracts which fund such plans if certain conditions are satisfied.

In PTE 79-41, the Department stated its views that if a plan purchases an insurance contract from a company that is unrelated to the employer pursuant to an arrangement or understanding, written or oral, under which it is expected that the unrelated company will subsequently reinsure all or part of the risk related to such insurance with an insurance company which is a party in interest with respect to the plan, the purchase of the insurance contract would be a prohibited transaction.

The Department further stated that as of the date of publication of PTE 79-41, it had received several applications for exemption under which a plan or its employer would contracted with an unrelated company for insurance, and the unrelated company would, pursuant to an arrangement or understanding, reinsure part or all of the risk with (and cede part or all of the premiums to) an insurance company affiliated with the employer maintaining the plan. The Department felt that it would not be appropriate to cover the various types of reinsurance transactions for which it had received applications within the scope of the class exemption, but would instead consider such applications on the merits of each individual case.

Summary of Facts and Representations

1. Deere is incorporated under the laws of the State of Delaware and is one of the world's largest manufacturers of farm and industrial equipment. The Plan, which is maintained by Deere, provides life insurance on an elective basis to active employees of Deere and its subsidiaries and to the dependents of such employees through the purchase of group term life insurance. The Plan had approximately 4,425 participants as of October 31, 1987.

2. JDLIC is a wholly owned subsidiary of Deere and is currently licensed to do business in 44 states. JDLIC was incorporated in 1937 and was acquired by Deere in 1982. JDLIC is primarily engaged in the business of selling life insurance and annuities to the general public and had annual premiums and annuity considerations for its fiscal year ended December 31, 1986 of approximately $38,400,000. As of that date, it had capital and surplus of approximately $26 million, and its total assets were approximately $186 million. JDLIC also provides life insurance on a direct basis to other welfare plans of Deere and its subsidiaries, but the applicants represent that such sales of insurance meet the conditions of PTE 79-41. In 1986, the premiums for those plans totaled approximately $6,800,000.

3. The life insurance benefit under the Plan is currently underwritten by CG, an unaffiliated insurance carrier. The life insurance benefits under the Plan are provided unconditionally by CG. On January 1, 1983, CG and JDLIC entered into a reinsurance agreement whereby JDLIC would receive 75 percent of the premiums paid and would pay 75 percent of the claims under the CG policy. The Plan is not a party to the reinsurance agreement. The applicants have requested that this proposed exemption apply to any successor company to CG that is also unrelated to Deere should Deere decide to insure this life insurance coverage with another carrier under the same type of arrangement.

4. The applicants represent that the subject reinsurance transaction has met and will continue to meet all of the conditions of PTE 79-41 covering direct insurance transactions:

(a) JDLIC is a party in interest as described in Act section 3(14)(G) with respect to the Plan by reason of stock affiliation with Deere, which maintains the Plan.

(b) JDLIC is licensed to do business in 44 states.

(c) JDLIC has been audited by the independent certified public accounting firm of Deloitte, Haskins & Sells for each of its fiscal years since 1982.

(d) JDLIC has received a Certificate of Compliance from its domiciliary state, Illinois, annually since prior to its acquisition by Deere in 1982.

(e) The Plan has paid and will pay no more than adequate consideration for the insurance. The subject transaction has not and will not in any way affect the cost to the Plan of the group life insurance contract.

(f) No commissions have been or will be paid with respect to the direct insurance by CG or any successor thereto or the reinsurance agreement between CG or any successor thereto and JDLIC.

(g) The gross premiums and annuity considerations received by JDLIC for group life and health insurance (both direct and reinsurance) or annuity contracts for all employee benefit plans (and their employers) with respect to which JDLIC is a party in interest under section 3(14) (E) or (G) of the Act have not exceeded and will not exceed 50 percent of the gross premiums and annuity considerations received by JDLIC for all lines of insurance in each taxable year, all of which, except for the subject reinsurance transaction, is written on a direct basis. The premiums for the Plan insurance have never exceeded 2.5 percent of JDLIC's total premiums, and, in 1986, were less than 1.5 percent. The total of premiums for all plans of Deere (direct and reinsured) received by JDLIC as a percentage of its total premiums and annuity considerations for the years 1983 through 1986 has ranged from a high of approximately 32 percent in 1984 to a low of approximately 19 percent in 1986.

5. In summary, the applicants represent that the subject transaction has met and will continue to meet the criteria of section 408(a) of the Act because: (a) Plan participants and beneficiaries are afforded insurance protection by CG, one of the largest and most experienced group insurers in the United States, at competitive market rates arrived at through arm's-length negotiations; (b) JDLIC is a sound, viable insurance company which does a substantial amount of direct public business outside its affiliated group of companies; and (c) each of the protections provided to the Plan and its participants and beneficiaries by PTE 79-41 has been and will continue to be met under the subject reinsurance transaction.

For Further Information Contact: Gary H. Lefkowitz of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

Empire Acceptance Company, Inc. Profit Sharing Plan (the Plan), Located in Greensboro, NC

[Application No. D-7683]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 18, 1975). If the exemption is granted, the restrictions of sections 406(a) and 406(b) (1) and (2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply for a period of five years to the sale of certain mortgage notes to the Plan by Empire Acceptance Company, Inc. (the Employer) and to the guarantee by the Employer to repurchase any mortgage notes which are in default and to the repurchase by the Employer of such mortgage notes, provided that the terms of the transactions are at least as favorable as those the Plan could obtain in an arm's-length transaction with an unrelated party.

Temporary Nature of Exemption

The proposed exemption is temporary and, if granted, will expire five years after the date of grant. Should the Employer wish to continue to sell mortgage notes to the Plan beyond the five-year period, the Employer may submit another application for exemption. The Employer may repurchase mortgage notes from the Plan after the five-year period so long as the mortgage notes were purchased by the Plan during the five-year period.

Summary of Facts and Restrictions

1. The Plan had nine participants and total assets of approximately $405,000 as of March 1, 1988. Approximately $315,000 of that amount are allocated to the account of William Starr (Starr) who is the owner of the Employer. The investment decisions of the Plan are made by Starr who is also the Plan's trustee.

2. The Employer is a mortgage lender. When the Employer loans money to a customer, the customer generally will sign a note payable to the order of the Employer. The note is usually secured by a deed of trust on the borrower's residence. In compiling its mortgage portfolio, the Employer uses the following criteria:

(a) The credit record of the borrower;

(b) Verification of the borrower's employment or source of income;

(c) Ratio of mortgage payments to borrower's income;

(d) Requiring that the borrower be a good credit risk; and

(e) Requiring that the property offered as security be especially attractive from the standpoint of value and continued marketability, or that the loan presents a lower than usual loan to value ratio.

3. The Employer proposes to sell certain mortgage notes originated by the Employer to the Plan. The purchase price will be mortgage notes' fair market value at the time of the sale. The sale of each mortgage note will be for cash and the Plan will pay no transfer charges or other costs in relation to the transaction. The Employer will service the mortgage account for each such note free of any charge to the Plan.

4. The total dollar value of mortgage notes sold to the Plan will not exceed at any one time 25 percent of the aggregate carrying value of the Plan's assets, with no more than five percent of the Plan's assets in any one mortgage note or the notes of any one borrower. To the extent possible, the mortgage notes sold to the Plan will be geographically and demographically diversified within the area served by the Employer. In addition, the Employer agrees, in writing, to repurchase any mortgage note that is in default for more than three months as well as to repurchase any mortgage note as needed to provide liquidity for the Plan.

5. The selection of mortgage notes to be sold to the Plan will be made by Robert Skenes of Greensboro, North Carolina, who will serve as an independent fiduciary (the Independent Fiduciary) in regard to the proposed transactions. The Independent Fiduciary states that he is unrelated to the Employer and that he is educated, trained and experienced in mortgage matters. From 1967 through 1977, the Independent Fiduciary was a vice-president and senior commercial loan officer with First Union National Bank in Greensboro. He is now self-employed as a real estate financial consultant and developer. The Independent Fiduciary also states that he has been advised by legal counsel as to the duties and responsibilities of a fiduciary under the Act and assumes those responsibilities in regard to the proposed transactions. The Independent Fiduciary will make

the determination that each sale of a mortgage note to the Plan is in the best interests of the Plan. The Independent Fiduciary will determine that each such transaction is on terms at least as favorable as the Plan could receive in a comparable transaction with an unrelated party. In addition, the Independent Fiduciary will monitor all formerly purchased mortgage notes, including the servicing of the mortgages, and will take any steps necessary to enforce the Plan's rights in relation to the mortgage notes.

The Independent Fiduciary will ensure that each mortgage note selected for the Plan is purchased for an amount which is not greater than its fair market value. In determining the fair market value of a mortgage note, the Independent Fiduciary will look at the original cost and the tax value of the property that is secured by the note and will add an appreciate factor of four percent per year.

In determining which mortgage notes will be purchased by the Plan, the Independent Fiduciary will use the following criteria:

(a) Only first mortgages will be sold to the Plan;

(b) The mortgage notes selected for purchase by the Plan will be at least three months old and have an established record of timely payment and be secured by a deed of trust;

(c) The balance owed on the mortgage note sold to the Plan shall not exceed 80 percent of the value of the secured property;

(d) An enforceable hazard insurance policy covering the property in an amount at least equal to the current outstanding balance of the mortgage note must be in existence;

(e) The original loan application and record for any mortgage considered will be reviewed in detail to determine that there has been no substantial change in the position of the borrower;

(f) The interest rate on any mortgage note purchased by the Plan will equal or exceed the current market rate available for similar investments; and

(g) The mortgage notes purchased by the Plan will be with full recourse against the Employer. In the event of default of a mortgage note, the Employer will purchase that mortgage note from the Plan at a price which is equal to the higher of (i) the current fair market value of the mortgage note or (ii) the total amount of the outstanding principal and accrued interest due on the mortgage note.

In the event that the Independent Fiduciary resigns, the Employer shall notify the Department's Office of Regulations and Interpretations of the name and qualifications of a prospective successor fiduciary and the reasons for the change. Solely for purposes of continuing the effectiveness of this exemption, the appointment of a successor independent fiduciary shall not be effective until the receipt by the Employer of the Department's approval.

6. In summary, the applicant represents that the proposed transactions will satisfy the statutory criteria of section 408(a) of the Act because: (1) The selection of mortgage notes to be sold to the Plan will be made by a Plan fiduciary who is independent of the Employer; (2) the Employer will repurchase a mortgage note from the Plan in the event of default on the note; (3) the Employer will service the mortgage account for each note free of charge to the Plan; (4) no more than 25 percent of the Plan's assets will be invested in the mortgage notes; and (5) the exemption will be a temporary exemption for a period of five years.

For Further Information Contact: Paul Kelty of the Department, telephone (202) 523-8883. (This is not a toll-free number.)

Proptech, Inc. Defined Benefit Pension Plan (the Plan), Located in San Diego, CA

[Application No. D-7730]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to a proposed series of loans (the Loans) by the Plan to Solana Beach Mini-Warehouse, Ltd. (the Partnership), a disqualified person and a general partnership in which the sponsor of the Plan, PROPTECH, INC. (the Employer) is the majority general partner, provided that at any time not more than twenty-five (25%) percent of the total assets of the Plan will be involved in such loans, and further provided that the terms of each of the Loans are not less favorable to the Plan than those obtainable in an arm's-length transaction with unrelated parties.

Summary of Facts and Representations

1. The Plan is a defined benefit plan with total assets of $719,562.11, as of October 31, 1988. The Plan has two participants, George Hunt and Cathleen Hunt, who are husband and wife.[3] The trustee of the Plan is George Hunt and the administrator of the Plan is the Employer. George Hunt is the sole owner of the Employer, which is a Delaware corporation that is engaged in the business of owning, managing, and leasing self-storage facilities in San Diego, California. The Partnership is a general partnership consisting of two partners, the Employer, which has a 75 percent majority interest in the Partnership, and Mr. Dale Marquardt, unrelated to the Plan, who has a minority interest of 25 percent in the Partnership. The primary purpose of the Partnership is to maintain and develop the miniwarehouse business.

2. The Employer requests an exemption from the sanctions of section 4975 of the Code to permit a series of loans by the Plan to the Partnership. The Loans will be used to reduce an outstanding loan for $800,000 made to the Employer for which repayment is owed to the San Diego Trust & Savings Bank of San Diego, California (the Bank). The Loans will be made over a period of five-year beginning in 1989 in amounts not to exceed $120,000 per year with a maximum of $600,000 for the entire five year period. The aggregate value of all outstanding individual Loans by the Plan to the Partnership will never exceed 25 percent of the total assets of the Plan. At all times the value of the Loans will be evidenced by a promissory note and will be secured by a second deed of trust on certain real property (the Property). Each time a new loan is made by the Plan to the Partnership a new promissory note, secured by a second deed of trust on the Property, will be executed for the Partnership by each partner of the Partnership and by Mr. Hunt, as an individual, to reflect the total debt outstanding of the Partnership under the Loans.

3. The repayment of principal and interest of 11.5 percent per annum on the Loans will be made in equal quarterly installments commencing in 1989. A total repayment of the Loans will be completed within fifteen years of the granting the initial loan with no penalty for prepayment of any sum. The Bank, which holds the first deed of trust on the Property, has given its written approval for the proposed placements of second deeds of trust as the Loans are made by the Plan to the Partnership. The secured

[3] Since Mr. and Mrs. Hunt are the only participants in the Plan and the Employer is wholly owned by Mr. Hunt, there is no jurisdiction under Title I of the Act pursuant to 29 CFR 2510.3-3(b). However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code.

interest of the Plan in the Property will be properly recorded under the laws of California and the improvements will be insured against fire and other hazards for the entire period of the Loans, at no expense to the Plan, in an amount no less than the outstanding balance of the first and second deed of trusts on the Property under both the Loans and the outstanding loan to the Bank.

4. The Property is located at 545 Stevens Avenue, Solama Beach, California and has been improved by a miniwarehouse facility consisting of 1,152 unit mini storage facility totalling 83,887 square feet of net rentable area. Wood Associates of Redlands, California, an independent appraisal firm determined that the Property had a fair market value of $4,900,000, as of June 22, 1987, and Conland Appraisal Associates of San Diego, California, another independent appraisal firm concurred as of July 13, 1988, with the appraised fair market value of $4,900,000 for the Property. The Property has a value considerably greater than 200 percent of the outstanding balance of the proposed Loans and the Bank loan, however if the Property should decrease in value, the parties in the Partnership agree to provide additional collateral, if necessary, to ensure that the value of the total collateral is at all times equal to at least 200 percent of the outstanding balance of the Loans and the Bank loan.

5. The First Interstate Mortgage Company, San Diego, California, a financial institution, made an evaluation of the proposed Loans and concluded that their terms represent fair market value and that it would grant a second loan under the terms as proposed. The participants of the Plan, Mr. and Mrs. Hunt, both believe the proposed Loans to be in the best interest of the Plan and its participants and both believe that the Loans are adequately secured to protect their interests. The Employer has no employees other than the Hunts and none are anticipated during the period of the Loans. However, should another employee become eligible to participate in the Plan, another plan with provisions identical to the Plan will be established for such employee or employees so that the only persons affected by the Loans will be the Hunts.

6. In summary, the applicant represents that the proposed transactions will satisfy the statutory criteria for an exemption under section 4975(c)(2) of the Code because: (a) The Loans are secured by real estate with an appraised value that is and will remain substantially more than 200 percent of the outstanding balance of the Loans and the Bank loan; (b) an evaluation of the Loans as proposed was made by a financial institution, which concluded that the Loans were at fair market value and it would grant loans under the proposed terms; (c) the Plan's secured interest under the Loans will be protected by properly recording the deeds of trust under the laws of California and the Property's improvements will be insured against fire and other hazards for the length of the Loans, at no cost to the Plan, in an amount no less than the outstanding balances of the first and second deeds of trust; (d) a policy of insurance on the Property will be obtained for fire and other hazards for the length of the Loans; and (e) the Hunts, the only participants affected by the transactions desire that the transactions be consummated.

Notice to Interested Persons: Because the Hunts are the only participants affected by the proposed transactions, the Department has determined that there is no need to distribute notice to interested persons. Comments and requests for a hearing are due 30 days from the date of publication of this notice in the **Federal Register.**

For Further Information Contact: Mr. C. E. Beaver of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

Southern California Floor Covering Pension Trust Fund (the Plan), Located in Pasadena, CA

[Application No. D-7738]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of sections 406(a) and 406(b)(1) and (2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the sale of a parcel of improved real property (the Property) by the Plan to Sanwa Bank California (Sanwa), a party in interest with respect to the Plan, provided the Plan receives the greater of $660,000 or the fair market value for the Property at the time of sale.

Summary of Facts and Representations

1. The Plan is a multiemployer, collectively bargained pension plan representing approximately 70 contributing employers. The sponsoring union is Resilient Floor and Decorative Covering Local Union 1247 of the International Brotherhood of Painters and Allied Traders. The Plan had total assets of approximately $59,300,000 of 1,474 participants as of October 31, 1988. Sanwa, a California banking corporation, is a co-trustee of the Plan which has investment management responsibilities in regard to the Plan.

2. The investment portfolio of the Plan includes the Property located in Cerritos, California. The Property consists of a bank branch facility, situated on a 0.66 acre portion of a shopping center, which is currently leased to Sanwa. The Plan purchased the Property in June 1970 from First Western Bank and Trust Co. (First Western), the predecessor bank to Sanwa. The cost to the Plan for the land and building on the land was $200,000. According to the applicant, the initial lease between the Plan and First Western was approved by the California Superior Court because of the requirements of California law. In order to overcome any problems with the California Civil Code on prohibited transactions between an employee benefit plan and related parties (prior to passage of the Act), an application was made to the California Superior Court in the County of Los Angeles. The lease was entered into in June 1970 for a period of 25 years and contains five option periods for up to 25 additional years. The current annual rental income on the Property is $44,507.

3. The Plan obtained an independent appraisal on the Property from Clifton Webb, Jr., and Jeffrey Sumida (Webb and Sumida) of Landauer Associates, Inc., a real estate consulting firm located in Santa Ana, California. The bank branch facility consists of a concrete block freestanding building constructed on 3,536 square feet of the Property. The improvements on the, Property also include professional landscaping and paved parking for 24 automobiles. Webb and Sumida believe that the highest and best use of the Property would be conversion of the bank building to retail use, with construction of an additional 2,064 square feet of retail space on the excess land component. Utilizing the cost, income, and comparable sales approaches to value, Webb and Sumida estimated that the fair market value of the Property, unencumbered by the current lease, was $660,000 as of June 24, 1988. Webb and Sumida also estimated that the fair market rent on the Property for the year ending in June 1988 was $51,343 (approximately $4,279 per month).

4. The trustees of the Plan instructed Sanwa in September 1987 to sell the Property to a third party. In March 1988,

the Department in an investigation of the Plan notified the Plan that in its view the lease between the Plan and Sanwa appeared to be a prohibited transaction.[4] Sanwa proposes to pay to the Plan at least $37,711 as additional rent (which is the difference between the rent paid by Sanwa and the fair rental value, as established in the appraisal from June 30, 1984 to the date of the appraisal). As of the appraisal date, Sanwa will make monthly rental payments of $4,279 to the Plan, the fair market rent established in the appraisal. Sanwa will continue to pay fair market rent to the Plan until sale of the Property is completed.[5]

Sanwa also proposes to purchase the Property from the Plan. The applicant notes that the Property is suitable for bank purposes, without renovations or modifications, and that the Plan might not be able to sell the Property to a third party for cash at fair market value. Sanwa will pay the greater of $660,000 or fair market value for the Property at the time of sale, based on a updated independent appraisal. The sale will be entirely for cash, and the Plan will pay no fees or commissions in regard to the transaction.

5. In summary, the applicant represents that the proposed transaction will satisfy the statutory criteria of section 408(a) of the Act because: (1) Sanwa will pay no less than fair market value for the Property at the time of sale; (2) the fair market value will be established by a current independent appraisal of the Property; (3) the transaction will allow the Plan to disengage from a lease between itself and a party in interest with respect to the Plan; and (4) the sale of the Property will be entirely for cash and the Plan will pay no fees or commissions in regard to the sale.

For Further Information Contact: Paul Kelty of the Department, telephone (202) 523-8883. (This is not a toll-free number.)

Pillsbury, Madison & Sutro Keogh Plan (the Keogh Plan), Located in San Francisco, CA

[Application No. D-7741]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the proposed loan of up to $10 million by the Keogh Plan to Pillsbury, Madison & Sutro (the Employer), provided that the terms of the transaction are not less favorable to the Keogh Plan than those obtainable in an arm's-length transaction with an unrelated party.

Summary of Facts and Representations

1. The Pillsbury, Madison & Sutro Retirement Plan is a co-mingled trust consisting of three parts, which include a Keogh Plan, a Tax Saving Plan, and a Voluntary Contribution Plan. The proposed transaction will involve only the assets of the Keogh Plan, whose total assets as of December 31, 1988 equalled approximately $42 million. The trustees of the Plan are currently W.D. Berry, J.M. Canty, P. Hudner, A.R. Kemp, Jr., W.J. Martin, Jr., T.N. McNamara, and G.A. Sears, all of whom are partners in the Employer. The Employer was established as a California general partnership in 1875 and is one of the largest law firms in the United States. For the year ended December 31, 1987, the Employer's gross revenues were $116.8 million and its net income was in excess of $37 million.

2. The Trustees of the Keogh Plan and the Employer have agreed to enter into a loan arrangement in which the Employer will borrow up to $10 million from the Keogh Plan. The arrangement contemplates two separate loan disbursements. The first, to be made as soon as the requested exemption is granted, will be for $6 million. The second, to be disbursed by September 15, 1990, will be for $4 million. The applicant represents that the total amount of the loans, including a prior loan approved by the Department, will not exceed 25% of the Keogh Plan's assets on the date of disbursement of each amount. Funds for the loans will come from a group annuity contract issued by Prudential Insurance Company of America.[6]

3. The proceeds from the loans will be used by the Employer to pay for automation equipment, software and related installation expenses for a fully integrated, automated office system encompassing word processing, electronic mail data base management, calendar, and docket systems and to repay loans from financial institutions to finance such purchases.

4. Each of the proposed loans will have a term of 5 years from the date of its disbursement. Principal and interest shall be repaid in equal monthly installments. Monthly interest payments on the remaining principal balance of the loans will be at the annual rate of 5 percentage points over the Federal Reserve Bank of San Francisco discount rate, or, if higher, the rate which provides the Keogh Plan with a return commensurate with the interest rate charged by persons in the business of lending money for loans made under similar circumstances, as determined by the Keogh Plan's independent fiduciary (See appointment of Union Bank, infra).

5. The loan will be secured by letters of credit (or a single letter of credit covering both loans) issued by the Bank of America equal to the total amount of the outstanding loan balance plus approximately 60 days accrued interest. In addition, the trustees of the Keogh Plan will appoint Union Bank as independent fiduciary for the Keogh Plan to determine the prudence of each loan, to administer and enforce the terms of the loan agreement and, if necessary, to draw down on the letters of credit on behalf of the Keogh Plan. The letters of credit may be drawn down by Union Bank upon certification by it that the amount being drawn down is due and payable under the loan agreement because of either the occurrence of an event of default under the loan agreement,[7] or the receipt of

[4] The applicant represents that the lease between the Plan and Sanwa was entitled to relief from the provisions of section 406 of the Act by virtue of section 414(c)(2) of the Act. Section 414(c)(2) provides an exemption until June 30, 1984, for a lease or joint use of property involving a plan and a party in interest pursuant to a binding contract in effect on July 1, 1974, provided certain conditions are met. The Department expresses no opinion as to whether the conditions of section 414(c)(2) and the regulations issued thereunder (29 CFR 2550.414c-2) were in fact met in regard to the situation described above.

[5] The applicant recognizes that the lease between the Plan and Sanwa may have constituted a prohibited transaction (at least after June 30, 1984) under section 406 of the Act and section 4975 of the Code. Accordingly, the applicant will pay the Internal Revenue Service all excise taxes that are applicable under section 4975(a) of the Code within 90 days of the publication in the Federal Register of the grant of this proposed exemption.

[6] The applicant represents that the Keogh Plan will not incur any market value adjustment or other penalty as a result of the liquidation of this investment.

[7] An event of default will occur if the Employer fails to pay interest or principal on the loans within 10 days after the due date, upon proof of any false or misleading statements made by the Employer under the representations and warranties or covenants of the agreement, the filing of bankruptcy, or a default under certain other loan agreements where the lender may accelerate payment. Upon the occurrence of an event of default, the obligation of the Keogh Plan to continue the loans is terminated, and at the option of the Keogh Plan all amounts of principal and interest under the loan become due and payable.

notice of termination of either letter of credit from Bank of America.

6. Under the letter of credit agreement, Bank of America will reserve the right to terminate the letter of credit upon 60 days written notice to Union Bank. If such a notice is given and substitute letters of credit are not obtained or the Employer does not repay all amounts of principal and interest outstanding under the loan within 30 days prior to the expiration of the letters of credit, an event of default under the loan agreement will occur. In such a case, Union Bank will demand full payment of all principal and interest owing under the loan agreement and will draw down on the letters of credit before they terminate so that interests of the Keogh Plan will be protected.

7. The terms of the loan trust agreement provide that Union Bank will hold the promissory notes evidencing the loans as trustee on behalf of the Keogh Plan, and will pay over to the trustees of the Keogh Plan any amounts of principal and interest received from the Employer and any amounts drawn down under the Bank of America letters of credit. Union Bank is authorized to enforce the provisions of the loan agreement and to collect the notes or the proceeds from the letters of credit as required to protect the interests of the Keogh Plan and its participants and beneficiaries. The loan trust agreement will terminate upon the repayment of the loans or the payment of the proceeds from the letters of credit. Union Bank will have control and authority only with respect to the Keogh Plan assets subject to the loan agreement.

8. Union Bank represents that, as independent fiduciary, it has reviewed various documents relating to the proposed loan and to the financial condition of the Employer. Those documents included, among others, the loan agreement and note, the loan trust agreement, the irrevocable letter of credit, and audited financial statements of the Employer. In addition, Union Bank has reviewed the documents establishing the Keogh Plan, current financial statements of the Keogh Plan and the allocation of the Keogh Plan's assets between the Prudential Group Annuity contract and other types of investments.

Based upon Union Bank's review of the documents referred to above and other information provided by the Keogh Plan, it has determined that the terms of the proposed loan are consistent with those customarily found in commercial loan arrangements and are no less favorable to the Keogh Plan than the Keogh Plan might obtain in a loan to an unrelated party. Union Bank has also determined that the proposed loan would be an appropriate investment for the Keogh Plan and in the interest of the Keogh Plan's participants and beneficiaries. Union Bank will review these determinations prior to making each disbursement under the loan agreement and will not make such disbursements unless it finds them to be appropriate and in the interest of the Keogh Plan.

9. The Employer represents that it does not control, is not controlled by, and is not under common control with Union Bank and is not otherwise affiliated with Union Bank. No partner in the Employer has any ownership interest in Union Bank, nor does any partner or relative of a partner hold a position as a director or senior management official of Union Bank. Although the Employer has no banking relationship with Union Bank, a few partners in the Employer have checking or savings accounts, loans, or other consumer banking relationships with Union Bank. The Employer has also provided legal services for Union Bank from time to time. In 1987, Union Bank paid the Employer $161,750 in legal fees, representing less than .2% of the firm's gross income for that year. The applicant represents that the Employer will neither advise nor counsel Union Bank with respect to any matter concerning the proposed loan arrangement or the Bank of America letter of credit arrangement. Thus, the applicant represents that Union Bank will be totally independent of the Employer with respect to this matter, and the Employer will not be in a position, by virtue of any past or existing business relationship, to influence the actions or decisions of Union Bank in connection with the proposed loan arrangements. Union Bank is also totally independent of the Bank of America.

10. In summary, the applicant represents that the proposed transaction meets the statutory criteria for an exemption under section 408(a) of the Act because:

(a) The loans' terms and conditions will be monitored by Union Bank;

(b) The loans will be secured by letters of credit from the bank of America. Such letters will be called if the Bank of America notifies Union Bank of its intent not to renew, and substitute letters of credit are not obtained; and

(c) Union Bank, as independent fiduciary to the Keogh Plan, has determined that the transaction is appropriate for the Keogh Plan and in the best interests of the Keogh Plan's participants and beneficiaries.

For further information contact: Alan H. Levitas of the Department, telephone (202) 523-8194. (This is not a toll-free number.)

Blackhawk, Inc. Employees' Retirement Plan and Trust (the Plan), Located in Phoenix, AZ

[Application No. D-7792]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted, the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the proposed purchase of vacant land (the Land) by the Plan from Mr. Kenneth A. Wallace, a disqualified person with respect to the Plan, provided the purchase price does not exceed the Land's fair market value as of the date of the purchase and provided further that the purchase does not cause the Plan to be disqualified in accordance with the provisions of section 415 of the Code.[8]

Summary of Facts and Representations

1. The Plan is a defined contribution plan covering only one participant, Mr. Kenneth A. Wallace (the Trustee), who is the trustee of the Plan, the sole owner of Blackhawk, Inc. (the Employer), the Plan sponsor, which has no employees other than the Trustee. The Trustee represents that no further employees of the Employer will participate in the Plan but will, when eligible, participate in a separate plan with identical provisions. As of October 31, 1988, the Plan's totalled $726,637.05

2. The Land comprises approximately 14 acres of vacant land located in the White Mountain area of Apache County, Arizona, described in said County's Notice of Valuation as SEC 18 TION R25E, Lot 6. The Trustee, who presently owns the Land, wishes to purchase it for the Plan for its fair market value as appraised by Mr. Jed B. Shapiro (the Realtor), of Coldwell Banker McCarty Realty.

3. Although the Land has been valued by the Apache County Assessor (the Assessor) at $34,536 (full cash value)

[8] Because Kenneth A. Wallace is the sole owner and employee of Blackhawk, Inc., the Plan sponsor, and the sole participant in the Plan, there is no jurisdiction under Title II of the Act pursuant to 29 CFR 2510.3-3 (b) and (c). However, there is jurisdiction under Title II of the Act under section 4975 of the Code.

and at $33,182 (limited cash value) as of January 1, 1989, the Realtor, on September 30, 1988, suggested listing the Land at a price of $19,950. The Realtor has inspected the Land and calculated its net usable area as 11.84 acres. He notes that a portion of the Land appears to be a seasonal wetland and that a domestic water well would be required to improve the Land.

4. The Trustee represents that the Realtor is totally independent of the Employer and is, in fact, unknown to the Trustee except as a realtor recommended as being the best in the area, so that there is no relationship between or among the Realtor, the Employer, or the Trustee. The Realtor states that he has actively pursued a full-time living marketing real estate in the White Mountain area for two years and that he is: An Arizona licensed real estate salesperson; a member of the Navajo County, Arizona, and National Association of Realtors; and a graduate of the Coldwell Banker Fast Start Program. He states that he holds a bachelor's degree in business administration and presently maintains a personal listing inventory in excess of $2.2 million.

5. In regard to the Assessor's full cash valuation of the Land, the Realtor asserts that his research of actual sales demonstrates that the Assessor is consistently high and that the standard relationship between the free market sales price and the full cash valuation for property taxation is typically 60–85%. He asserts that the Assessor's full cash valuation is clearly unsupported by recent or historic sales, explaining that the number of potential buyers is limited and that most of the property in the area of the Land is undeveloped, owned by individuals who do not live in the area, and affected by the depressed market conditions present in the White Mountains (and, in fact, in all of Arizona). He asserts that his observations, summarized above, are, to the best of his knowledge and professional competence, a factual representation of current conditions. The Trustee states that he agrees with the Realtor's valuation of the Land and that he is appealing the Assessor's valuation through the procedures established for such appeals.

6. The Trustee represents that there will be no commission or other expense involved in the transfer of the Land to the Plan, that the Plan will pay the purchase price in a cash lump sum on the date of the purchase, and that said purchase price will not exceed the fair market value of the Land as of the purchase date as determined by the Realtor or another qualified appraiser who is unrelated to the Trustee and the Employer. The Trustee also represents that if the difference between the Assessor's valuation and the price to be paid by the Plan to purchase the Land were deemed to constitute a contribution or other addition to the Plan for purposes of section 415(c) of the Code, the limits provided by that section would not be exceeded. The Trustee represents that the Plan stands to benefit from selling the Land in the future at a higher price and/or terms which will benefit the Plan and its sole participant. He also represents that the Land does not require management as it is vacant and that a future sale of the Land by the Plan can be completed with a minimum of effort.

7. In summary, the Trustee represents that the proposed purchase satisfies the exemption criteria set forth in section 4975(c)(2) of the Code because: (a) The proposed purchase price will not exceed the land's fair market value as of the date of the purchase as determined by a qualified unrelated appraiser; (b) no commissions or other purchase expenses will be charged to the Plan; (c) the Trusee, who is the sole participant in the Plan, believes the Plan stands to benefit from reselling the Land in the future; (d) the Trustee is the only Plan participant affected by the proposed purchase, which he wishes to effect; and (e) the contribution limits provided by section 415 of the Code would not be exceeded if the difference between the price to be paid by the Plan to acquire the Land and the Assessor's valuation were deemed to be a contribution or other addition to the Plan for purposes of that Code section.

Tax Consequences of Transaction

The Department of the Treasury has determined that if a transaction between a qualified employee benefit plan and its sponsoring employer (or affiliate thereof) results in the plan either paying less than or receiving more than fair market value, such excess may be considered to be a contribution by the sponsoring Employer to the plan and therefore must be examined under applicable provisions of the Code, including section 401(a)(4), 404, and 415.

Notice to Interested Persons

Because the Trustee is the only participant in the Plan and the sole owner of the employer, it has been determined that there is no need to distribute the notice of proposed exemption to interested persons. Comments and hearing requests on the proposed exemption are due 30 days after the date of publication of said notice in the **Federal Register**.

For further information contact: Mrs. Miriam Freund, of the Department, telephone (202) 523–8194. (This is not a toll-free number.)

John R. Ciliberti, M.D., P.S. Pension Plan and Trust (the Plan), Located in Redmond, WA

[Application No. D–7924]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the proposed sale (the Sale) for cash of certain real property (the Property) by the Plan to John R. Ciliberti, M.D., a disqualified person with respect to the Plan, provided that the sales price for the Property is the higher of the sum of $76,000 or the fair market value of the Property on the date of the Sale.

Summary of Facts and Representations

1. The Plan is a defined benefit plan with total assets of $382,592.03, as of October 31, 1988. John R. Ciliberti, M.D. (the Applicant) is the trustee of the Plan and its only participant as well as the sole shareholder of the sponsor of the Plan, John R. Ciliberti, M.D., P.S. (the Employer).[9]

2. The Property is a parcel of unimproved real property consisting of approximately 2.5 acres with 400 feet of waterfront located in the upper northern region of Puget Sound on Stuart Island at the extreme northwesternly terminus of San Juan County, Washington. Lynne Mercer, a real estate broker with nine years experience in the area with Friday Harbor Realty, Inc., Friday Harbor, Washington, describes the Property as being remote, slow in sales activities, and only reachable in good weather by private boat or airplane. It is designated

[9] Since John R. Ciliberti, M.D. is the sole shareholder of the Employer and is the only participant in the Plan, there is no jurisdiction under Title I of the Act pursuant to 29 CFR 2510.3–3(b). However, there is jurisdiction under Title II of the Act under section 4975 of the Code.

as an "outer island", lacking public power, water, telephone or ferry services. As of November 7, 1988, the Property was appraised by an independent appraiser, Donald G. Montgomery, MAI with Wm. T. Follis, Realtor, Bellingham, Washington. He determined that the fair market value of the Property is $76,000.

3. The Applicant determined shortly after the Plan purchased the Property from an unrelated party that the investment made by the Plan was a mistake. The discrenment of the erroneous investment arose when the Applicant comprehended that because of the condition and location of the Property, it would not appreciate in value as initially anticipated and would not generate income for the Plan. It became obvious to the Applicant that if the Plan continued to hold title to the Property, the unsuitable investment would deplete assets of the Plan by the payments of property taxes and maintenance costs. The Applicant desires to remedy the poor investment quickly by his cash purchase of the Property for the higher of the sum of $76,000 or the fair market value of the Property. By personally purchasing the Property, the Applicant intends for the Plan to avoid a delay in selling the Property to an unrelated party and the payment of real estate commissions and other expenses. All recording, escrow, excise or any other fees will be paid by the Applicant in the proposed Sale.

4. In summary, the Applicant represents that the proposed transaction will satisfy the statutory criteria for an exemption under section 4975(c)(2) of the Code because: (a) The proposed Sale will be a one-time transaction for cash; (b) the Plan will receive the higher of the sum of $76,000 or the fair market value on the date of the Sale as determined by an independent, qualified appraiser; (c) the Plan will pay no real estate commissions nor any other fees or expenses in connection with the proposed Sale; and (d) the Applicant, the only participant affected by the proposed transaction, desires that the proposed transaction be consummated.

Notice to Interested Persons: Since John R. Ciliberti, M.D., is the sole owner of the Employer and the only participant of the Plan, it has been determined that there is no need to distribute the notice of the proposed exemption to interested persons. Comments and requests for a hearing are due 30 days after publication of this notice in the Federal Register.

For Further Information Contact: Mr. C. E. Beaver of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 14th day of April 1989.

Robert J. Doyle,

Director of Regulations and Interpretations, Pension and Welfare Benefits Administration, U.S. Department of Labor

[FR Doc. 89-9483 Filed 4-19-89; 8:45 am]

BILLING CODE 4510-29-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[89-28]

NASA Advisory Council (NAC), Space Science and Applications Advisory Committee (SSAAC), Astrophysics Subcommittee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Space Science and Applications Advisory Committee, Astrophysics Subcommittee.

DATE AND TIME: May 4, 1989, 9 a.m. to 4:30 p.m.

ADDRESS: Capital Gallery, West Wing, Room 100, 600 Maryland Avenue SW., Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Dr. Robert Haymes, Code EZ, National Aeronautics and Space Administration, Washington, DC 20546 (202/453-1435).

SUPPLEMENTARY INFORMATION: The Space Science and Applications Advisory Committee consults with and advises the NASA Office of Space Science and Applications (OSSA) on long range plans for, work in progress on, and accomplishments of NASA's Space Science and Applications programs. The Astrophysics Subcommittee provides advice to the Astrophysics Division and to the SSAAC on operation of the Astrophysics Program and on formulation and implementation of the Astrophysics research strategy. The Subcommittee will meet to receive reports on the Data Analysis Manpower Workshop, the Management Operations Working Groups, restructuring of the Space Science Board, and plan future Subcommittee activities. The Subcommittee is chaired by Dr. Irwin Shapiro and is composed of 34 members. The meeting will be open to the public up to the capacity of the room (approximately 50 including Subcommittee members).

Type of Meeting: Open.

Agenda

Thursday, May 4

9 a.m.—Introduction and Opening Remarks.
9:10 a.m.—Recent Developments.
9:40 a.m.—Data Analysis Manpower Workshop Report.
10 a.m.—Management Operations

Working Group Reports.
1 p.m.—Restructuring of the Space Science Board.
2 p.m.—Report on the Office of Aeronautics and Space Technology.
3:15 p.m.—Support for Ground-based Observing.
4 p.m.—Subcommittee Discussion.
4:30 p.m.—Adjourn.

John W. Gaff,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

April 14, 1989.

[FR Doc. 89-9481 Filed 4-19-89; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meeting of Humanities Panel

AGENCY: National Endowment for the Humanities.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, as amended), notice is hereby given that the following meetings of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Stephen J. McCleary, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506; telephone 202/786-0322.

SUPPLEMENTARY INFORMATION: The proposed meetings are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given on confidence to the agency by grant applicants. Because the proposed meetings will consider information that is likely to disclose: (1) Trade secrets and commercial or financial information obtained from a person and privileged or confidential; (2) information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy; or (3) information the disclosure of which would significantly frustrate implementation of proposed agency action, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee meetings, dated January 15, 1978, I have determined that these meetings will be closed to the public pursuant to subsections (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

1. *Date:* May 15, 1989.
Time: 8:30 a.m. to 5:30 p.m.
Room: 315.
Program: This meeting will review applications in Higher Education Programs, submitted to the Division of Education Programs, for projects beginning after October 1, 1989.

2. *Date:* May 17, 1989.
Time: 8:30 a.m. to 5:00 p.m.
Room: 316-2.
Program: This meeting will review applications in Higher Education Programs, submitted to the Division of Education Programs, for projects beginning after October 1, 1989.

3. *Date:* May 19, 1989.
Time: 8:30 a.m. to 5:00 p.m.
Room: 430.
Program: This meeting will review applications in Higher Education Programs, submitted to the Division of Education Programs, for projects beginning after October 1, 1989.

4. *Date:* May 22 1989.
Time: 8:30 a.m. to 5:00 p.m.
Room: 430.
Program: This meeting will review applications in Higher Education Programs, submitted to the Division of Education Programs, for projects beginning after October 1, 1989.

5. *Date:* May 24, 1989.
Time: 8:30 a.m. to 5:00 p.m.
Room: M-14.
Program: This meeting will review applications in Higher Education Programs, submitted to the Division of Education Programs, for projects beginning after October 1, 1989.

Stephen J. McCleary,

Advisory Committee Management Officer.

[FR Doc. 89-9431 Filed 4-19-89; 8:45 am]

BILLING CODE 7536-01-M

National Endowment for the Humanities; Meeting

AGENCY: National Endowment for the Humanities.

ACTION: Notice of meetings.

SUMMARY: The National Endowment for the Humanities will hold two public meetings for discussion of the upcoming reauthorization of the National Foundation on the Arts and the Humanities Act (Pub. L. 99-194) as it relates to the National Endowment for the Humanities. The first will be held in Dallas, Texas, on May 23, 1989, and the second will be held in Chicago, Illinois, on May 24, 1989.

FOR FURTHER INFORMATION CONTACT: Rex O. Arney, General Counsel, National Endowment for the Humanities, Washington, DC 20506, Telephone: (202) 786-0322.

SUPPLEMENTARY INFORMATION: Members of the public are invited to give their views on the legislation that established the National Endowment for the Humanities. Individuals who wish to present their views are encouraged to notify the Endowment in advance and to submit a written copy of their comments prior to the meeting. These meetings will be open to the public on a space available basis. If you need special accommodations due to a disability, please contact the Endowment at least seven (7) days prior to the meeting.

1. *Date:* May 23, 1989
Time: 10:00 a.m.
Place: Plaza Level Auditorium, J. Erik Jonsson Central Library, 1515 Young Street, Dallas, Texas

2. *Date:* May 24, 1989
Time: 10:00 a.m.
Place: Swift Hall, Third Floor, 1025-35 East 58th Street, Main Quadrangle of the University of Chicago, Chicago, Illinois

Stephen J. McCleary,

Advisory Committee, Management Officer.

[FR Doc. 89-9506 Filed 4-19-89; 8:45 am]

BILLING CODE 7536-01-M

Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the National Council on the Arts will be held on May 12, 1989 from 9:00 a.m. to 5:15 p.m., and on May 13, 1989 from 9:00 a.m. to 7:00 p.m., in Room M-09 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public on Friday, May 12, 1989 from 9:00 a.m. to 5:15 p.m., and on Saturday, May 13, 1989, from 9:00 a.m. to 4:00 p.m. The topics for discussion will include Program Review and Guidelines for State Programs; Music: Professional Training, Recording, and Centers for New Music Resources; Expansion Arts; Expansion Arts/Inter-Arts Organizational Development Pilot for Presenters; Dance; Folk Arts; and Literature. In addition there will be discussions on Advanced Television Technologies, Reauthorization of the Agency and FY 91 Budget Planning.

The remaining sessions on Saturday May 13, 1989, from 4:00 to 7:00 p.m. are for the purpose of Council review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c)(4), (6) and 9(B) of Title 5, United States Code.

If you need special accommodations due to a disability, please contact the Office for Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682-5496 at least seven days (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

April 13, 1989.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 89-9526 Filed 4-19-89; 8:45 am]

Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Design Arts Advisory Panel (Challenge III Section) to the National Council on the Arts will be held on May 11, 1989, from 9:00 a.m.-5:00 p.m. in Room 714 at the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

A portion of this meeting will be open to the public on May 11, 1989 from 4:00 p.m.-5:00 p.m. The topics for discussion will be policy issues.

The remaining portion of this meeting on May 11, 1989 from 9:00 a.m.-4:00 p.m. is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the Federal Register of February 13, 1980, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

If you need special accommodations due to a disability, please contact the Office for Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington, DC 20506, 202/682-5532, TTY 202/682-5496 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682-5433.

April 13, 1989.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 89-9527 Filed 4-19-89; 8:45 am]

BILLING CODE 7537-01-M

Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Inter-Arts Advisory Panel (Artists' Projects: New Forms Prescreening Section) to the National Council on the Arts will be held on May 8—11, 1989, from 9:30 a.m.—6:00 p.m. in Room 716 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting is for the purposes of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

April 13, 1989.

[FR Doc. 89-9528 Filed 4-19-89; 8:45 am]

BILLING CODE 7537-01-M

Meeting

Notice is hereby given that the National Endowment for the Arts will sponsor a meeting on May 15, 1989, from 10:00 a.m.-1:00 p.m. in Room MO-9 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

The topic of discussion will be the upcoming reauthorization of the National Foundation on the Arts and the Humanities Act (Pub. L. 99-194) as it relates to the National Endowment for the Arts. This meeting will be open to the public on a space available basis.

If you need special accommodations due to a disability, please contact the Office for Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington DC 20506, 202/682-5532, TTY 202/682-5496 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Rose M. DiNapoli, Congressional Liaison Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682-5434.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

April 13, 1989.

[FR Doc. 89-9529 Filed 4-19-89; 8:45 am]

BILLING CODE 7537-01-M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards (ACRS) and Advisory Committee on Nuclear Waste (ACNW); Proposed Meetings

In order to provide advance information regarding proposed public meetings of the ACRS Subcommittees and meetings of the ACRS full Committee, and of the ACNW, the following preliminary schedule is published to reflect the current situation, taking into account additional meetings which have been scheduled and meetings which have been postponed or cancelled since the last list of proposed meetings published March 21, 1989 (54 FR 11588). Those meetings which are definitely scheduled have had, or will have, an individual notice published in the **Federal Register** approximately 15 days (or more) prior to the meeting. It is expected that sessions of ACRS full Committee and ACNW meetings designated by an asterisk (*) will be open in whole or in part to the public. ACRS full Committee and ACNW

meetings begin at 8:30 a.m. and ACRS Subcommittee meetings usually begin at 8:30 a.m. The time when items listed on the agenda will be discussed during ACRS full Committee and ACNW meetings and when ACRS Subcommittee meetings will start will be published prior to each meeting. Information as to whether a meeting has been firmly scheduled, cancelled, or rescheduled, or whether changes have been made in the agenda for the May 1989 ACRS full Committe and the ACNW meetings can be obtained by a prepaid telephone call to the Office of the Executive Director of the Committee (telephone: 301/492-7288, ATTN: Barbara Jo White) between 7:30 a.m. and 4:15 p.m., Eastern Time.

ACRS Subcommittee Meetings

Occupational and Enviornmental Protection Systems, April 20, 1989, Bethesda, MD. The Subcommittee will review the proposed interim standard for occupational exposure of the skin to beta radiation from small radioactive particles (hot particles).

Instrumentation and Control Systems, April 21, 1989, Bethesda, MD. The Subcommittee will review the implementation status of the ATWS rule.

Limerick 2, April 25, 1989, Philadelphia, PA. The Subcommittee will review the application of the Philadelphia Electric Company for a license to operate Limerick Unit 2.

Materials and Metallurgy, April 27, 1989, Bethesda, MD. the Subcommittee will discuss the status of the following matters: erosion/corrosion of pipes, hydrogen/water chemistry, zinc addition to the primary coolant loop and its effects on materials, decontamination effects on materials, and other related matters.

Mechanical Components, May 3, 1989, MD., The Subcommittee will continue the discussion on proposed NRC staff generic letter on testing and surveillance of all safety-related MOVs.

General Electric Reactor Plants (ABWR), May 10-11, 1989, Bethesda, MD. The Subcommittee will continue its review of the GE ABWR. The Subcommittee will also preview Chapters 1, 8, 9, 11, 12, 13, 14 and 17 of the Safety Analysis Report related to GE ABWR.

Joint Thermal Hydraulic Phenomena and Core Performance, May 23, 1989, Bethesda, MD. The Subcommittee will discuss: (1) The NRC-RES thermal Hydraulic research program plan as documented in NUREG-1252, and a proposed SECY paper and (2) the status of the ongoing effort to address the implications of the core power oscillation event at La Salle Unit 2.

Regulatory Policies and Practices, May 24, 1989, Bethesda. MD. The Subcommittee will review a proposed rule on nuclear plant license renewal.

Materials and Metallurgy, May 25, 1989, Bethesda, MD. The Subcommittee will review low upper shelf fracture energy concerns of reactor pressure vessels.

Joint Regulatory Activities and Containment Systems, July 12, 1989, Bethesda, MD. The Subcommittee will review the proposed final revision to Appendix J to 10 CFR Part 50, "Primary Reactor Containment Leakage Testing for Water-Cooled Power Reactors."

Reliability Assurance, Date to be determined (end of May), Bethesda, MD. The Subcommittee will discuss the status of implementation of USI A-46, "Seismic Qualification of Equipment in Operating Plants,"

Auxiliary and Secondary Systems, Date to be determined (end of May), Bethesda, MD. The Subcommittee will discuss the proposed Generic Letter on Service Water System Problems Affecting Safety-Related Equipment, and the Bio-fouling issue.

Joint Severe Accidents, and Probabilistic Risk Assessment, Date to be determined (May-June), location to be determined. The Subcommittees will discuss the second draft of NUREG-1150, "Severe Accident Risks: An Assessment for Five U.S. Nuclear Power Plants."

Advanced Pressurized Water Reactors, Date to be determined (June), Bethesda, MD. The Subcommittee will discuss the comparison to WAPWR (RESAR SP/90) design with other modern plants (in U.S. and abroad).

Advanced Pressurized Water Reactors, Date to be determined (June), Bethesda, MD. The Subcommittee will discuss the licensing review bases document being developed for Combustion Engineering's Standard Safety Analysis Report-Design Certification (CESSAR-DC).

B&W Reactor Plants (Rancho Seco), Date to be determined (late June-early July), Sacramento, CA. The Subcommittee will discuss the lessons learned for the approximately 2-year shutdown of Rancho Seco.

AC-DC Power Systems Reliability, Date to be determined (June/July), Bethesda, MD. The Subcommittee will review the proposed resolution of Generic Issue 128, "Electrical Power Reliability."

Auxiliary and Secondary System, Date to be determined (June/July), Bethesda, MD. The Subcommittee will review the adequacy of the staff's proposed plans to implement the recommendations resulting from the Fire Risk Scoping Study and other matters related to fire protection sytems.

Severe Accidents, Date to be determined (June/July), Bethesda, MD. The subcommittee will discuss the NRC Severe Accident Research Program (SARP) plan.

Thermal Hydraulic Phenomena, Date to be determined (July), Bethesda, MD. The Subcommittee will review the NRC staff's proposed resolution of Generic Issue 84: "CE PORVs."

Plant Operating Procedures, Date to be determined (July), Bethesda, MD. The Subcommittee will review the status of the NRC program on Technical Specification Improvement.

Severe Accidents, Date to be determined (July/August), Bethesda, MD. The Subcommittee will discuss the NUMARC Accident Management guideline document and the NRC research program in the accident management area.

Decay Heat Removal System, Date to be determined (July/August), Bethesda, MD. The Subcommittee will review the proposed resolution of Generic Issue 23: "RCP Seal Failures."

Joint Thermal Hydraulic Phenomena and Core Performance, Date to be determined (September), Bethesda, MD. The Subcommittees will continue its review of the implication of the core power oscillation event at LaSalle, Unit 2.

Decay Heat Removal System, Date to be determined Bethesda, MD. The Subcommittee will explore the issue of the use of feed and bleed for decay heat removal in PWRs.

Thermal Hydraulic Phenomena, Date to be determined Bethesda, MD. The Subcommittee will discuss the status of Industry best-estimate ECCS model submittals for use with the revised ECCS Rule.

Auxiliary and Secondary Systems, Date to be determined Bethesda, MD. The Subcommittee will discuss the: (1) Criteria being used by utilities to design Chilled Water Systems, (2) regulatory requirements for Chilled Water Systems design, and (3) criteria being used by the NRC staff to review the Chilled Water Systems design.

Extreme External Phenomena, Date to be determined, Bethesda, MD. The Subcommittee will review planning documents on external events.

ACRS Full Committee Meetings

349th ACRS Meeting, May 3-6, 1989—Items are tentatively scheduled.

*A. *Meeting with NRC Commissioners (Open)*—Discuss recent

ACRS reports to NRC regarding Generic Issue-99, Improved Reliability of Residual Heat Removal Capability in PWRs dated September 14, 1988 and February 16, 1989; Unresolved Safety Issue A-45, Shutdown Decay Heat Removal Requirements dated September 14, 1988, and the NRC Safety Goal Implementation Plan dated February 16, 1989.

*B. *NUREG-1150, Reactor Risk Reference Document (Open)*—Review and comment on proposed revised version of NUREG-1150, Severe Accident Risk: An Assessment for Five U.S. Nuclear Power Plants

*C. *ACRS/ACNW Scope of Responsibilities (Open)*—Discuss proposed ACRS recommendations to the NRC.

*D. *Limerick Nuclear Power Station Unit 2 (Open)*—Review and report on the application of the Philadelphia Electric Company for a license to operate this plant.

*E. *Human Factors (Open)*—Review and comment regarding proposed NRC Human Factors Research Program Plant and the agency's Human Factors Initiatives.

*F. *10 CFR Parts 50 and 55 (Open)*—Review and comment regarding proposed NRC rules regarding education requirements for Senior Reactor Operators and Supervisors at nuclear power plants. Representatives of the NRC staff and NUMARC will participate, as appropriate.

*G. *Unresolved Safety Issue A-40, Seismic Design Criteria (Open)*—Review and report on the proposed resolution of this USI.

*H. *Radiological Effect of "Hot Particles" (Open)*—Review and report on proposed NRC generic letter regarding evaluation of radiation exposure/doses from "hot particles."

*I. *Evaluation of Operating Experience (Open)*—Briefing and discussion of AEOD reports on several aspects of nuclear power plant operations including loss of decay heat removal capability due to rapid cavity pump down, and operational experience review of potential large openings in containment.

*J. *Safety-Related Value Testing and Surveillance (Open)*—Discuss proposed ACRS report to the NRC regarding proposed generic letter on testing and surveillance of safety-related motor operated valves in nuclear power plants.

*K. *ACRS Subcommittee Activities (Open/Closed)*—Discuss status of assigned activities of designated ACRS subcommittee meetings, including the status of the implementation of the NRC rule on Anticipated Transients Without Scram (ATWS), and the planning of ACRS activities and allocation of its resources.

L. *Appointment of ACRS Members (Closed)*—Discuss the status of appointment of ACRS members and the qualifications of candidates proposed for nomination as members of the ACRS.

*M. *Anticipated ACRS Activities (Open)*—Discuss anticipated ACRS subcommittee activities and items proposed for consideration by the full committee.

*N. *Emergency Planning (Open)*—Briefing and discussion regarding the status of emergency planning and preparedness for nuclear power plants.

*O. *Performance Indicator Program (Open)*—Briefing by representatives of the NRC staff regarding development and use of the performance indicators at nuclear power plants.

*P. *Chemistry/Corrosion Current Issues (Open)*—Discussion of the status of the issues regarding: erosion/corrosion of pipes, hydrogen/water chemistry, zinc addition to primary coolant loop and its effects on materials, decontamination effects on materials, and boric acid corrosion.

350th ACRS Meeting, June 8-10, 1989—Agenda to be announced.

351st ACRS Meeting, July 13-15, 1989—Agenda to be announced.

ACNW Full Committee Meetings

10th ACNW Meeting, May 11, 1989—Items are tentatively scheduled.

The following items will be discussed:

1. Consideration of the Site Characterization Plan and the NRC staff's Site Characterization Analysis. (Open)

2. Environmental Monitoring of Low-Level Radioactive Waste Disposal Facilities. (Open)

11th ACNW Meeting, June 13, 1989—Agenda to be announced.

12th ACNW Meeting, June 28-30, 1989—Agenda to be announced.

13th ACNW Meeting, July 26-27, 1989—Agenda to be announced.

Dated: April 13, 1989.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 89-9411 Filed 4-19-89; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards Subcommittee on Mechanical Components; Meeting

The ACRS Subcommittee on Mechanical Components will hold a meeting on May 3, 1989, Room P-422, 7920 Norfolk Avenue, Bethesda, MD.

The entire meeting will be open to public attendance.

The agenda for subject meeting shall be as follows:

Wednesday, May 3, 1989—8:30 a.m. Until the Conclusion of Business

The Subcommittee will continue discussion on proposed NRC staff's generic letter on testing and surveillance of all safety-related MOVs.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member identifed below as far in advance as practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Elpidio Igne (telephone 301/492-8192) between 7:30 a.m. and 4:15 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: April 13, 1989.

Gary Quittschreiber,

Chief, Project Review Branch No. 2.

[FR Doc. 89-9410 Filed 4-19-89; 8:45 am]

BILLING CODE 7590-01-M

Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission has issued a revision to a guide in its Regulatory Guide Series. This series has been developed to describe and make available to the public such information as methods acceptable to the NRC staff

for implementing specific parts of the Commission's regulations, techniques used by the staff in evaluating specific problems or postulated accidents, and data needed by the staff in its review of applications for permits and licenses.

Revision 1 to Regulatory Guide 3.45, "Nuclear Criticality Safety for Steel-Pipe Intersections Containing Aqueous Solutions of Fissile Materials," describes procedures acceptable to the NRC staff for the prevention of criticality accidents in the storage and processing of aqueous solutions of fissile materials in steel-pipe intersections. This guide endorses ANSI/ANS-8.9-1987, "Nuclear Criticality Safety Criteria for Steel-Pipe Intersections Containing Aqueous Solutions of Fissile Material."

Comments and suggestions in connection with (1) items for inclusion in guides currently being developed or (2) improvements in all published guides are encouraged at any time. Written comments may be submitted to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Regulatory guides are available for inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC. Copies of issued guides may be purchased from the Government Printing Office at the current GPO price. Information on current GPO prices may be obtained by contacting the Superintendent of Documents, U.S. Government Printing Office, Post Office Box 37082, Washington, DC 20013-7082, telephone (202) 275-2060 or (202) 275-2171. Issued guides may also be purchased from the National Technical Information Service on a standing order basis. Details on this service may be obtained by writing NTIS, 5285 Port Royal Road, Springfield, VA 22161.

(5 U.S.C. 552(a))

Dated at Rockville, Maryland this 13th day of April 1989.

For the Nuclear Regulatory Commission.

Eric S. Beckjord, Director,

Office of Nuclear Regulatory Research.

[FR Doc. 89-9492 Filed 4-19-89; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 55-08347 and ASLBP No. 88-577-02-EA]

Atomic Safety and Licensing Board; Hearing

April 13, 1989.

Before Administrative Judges: B. Paul Cotter, Jr., Chairman; Harry Foreman; Jerry R. Kline.

In the Matter of: Maurice P. Acosta, Jr., Operator License No. 6010-2 EA 88-164

Please take notice that an evidentiary hearing on the above proceeding will begin at 1:30 p.m. on Wednesday, May 24 and going through all or part of Friday, May 26. The hearing will be held at the Moot Courtroom, California Western School of Law, 350 Cedar Street, San Diego, California 92101 and begin at 9:00 a.m. every day except Wednesday.

For The Atomic Safety and Licensing Board.

Dated at Bethesda, Maryland this 13th day of April 1989.

B. Paul Cotter, Jr.,

Chairman, Administrative Judge.

[FR Doc. 89-9543 Filed 4-19-89; 8:45 am]

BILLING CODE 7590-01-M

Draft Regulatory Guide; Withdrawal

The Nuclear Regulatory Commission is withdrawing from all consideration Task SC 708-4, "Qualification and Acceptance Tests for Snubbers Used in Systems Important to Safety," which was issued for public comment in February 1981 as a draft regulatory guide.

The licensing staff has indicated that there are no plans for using the guidance proposed in Task SC 708-4 in the licensing process. Therefore, the NRC staff has ceased development of Task SC 708-4.

The Regulatory Guide Series was developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the Commission's regulations, techniques used by the staff in evaluating specific problems or postulated accidents, and data needed by the staff in its review of applications.

(5 U.S.C. 552(a))

Dated at Rockville, Maryland, this 13th day of April 1989.

For the Nuclear Regulatory Commission.

Guy A. Arlotto,

Director, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. 89-9491 Filed 4-19-89; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-269, 50-270, and 50-287]

Duke Power Co.; Denial of Amendments to Facility Operating Licenses and Opportunity for Hearing

The United States Nuclear Regulatory Commission (the Commission) has denied a request by the licensee for amendments to Facility Operating Licenses Nos. DPR-38, DPR-47 and DPR-55, issued to the Duke Power Company (the licensee) for operation of the Oconee Nuclear Station, Units 1, 2, and 3 (the facility) located in Oconee County, South Carolina.

The denied amendments, as proposed by the licensee, would modify the Technical Specifications to relax the requirements for the position of Superintendent of Operations by permitting the requirements to be based on the licensee's Senior Reactor Operator (SRO) "certification" program. The amendments were requested April 10, 1987.

The licensee's application for the amendments was published in the **Federal Register** on May 20, 1987 (52 FR 18978).

The NRC staff finds the proposed change to represent a significant departure from the existing requirement in that candidates for certification do not take the NRC license examination. We find the functions and responsibilities of the Superintendent of Operations to be important elements in the overall safe operation of the plant. The position provides the broad managerial responsibility for plant operation described in section 3.2.1 of ANSI/ANS 3.1-1978, "Selection and Training of Nuclear Power Plant Personnel." As such, we conclude that the knowledge and skills resulting from the SRO training for this position should have been demonstrated, in part, through the successful completion of the NRC examination.

Accordingly, it continues to be the staff position that adequate qualification for the position of Superintendent of Operations means that the individual holds or has held an SRO license on the assigned plant or on a similar plant. The request was, therefore, denied.

By May 22, 1989, the licensee may demand a hearing with respect to the denial described above and any person whose interests may be affected by the proceeding may file a written petition for leave to intervene.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, United States Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room 2120 L Street, NW. Washington, DC, by the above date.

A copy of any petitions should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to J. Michael McGarry, III, Esquire, Bishop, Liberman, Cook, Purcell, and

Reynolds, 1400 L Street, NW., Washington, DC 20005, attorney for the licensee.

For further details with respect to this action, see: (1) The application for amendment dated April 10, 1987, and (2) the Commission's letter to Duke Power Company dated April 14, 1989, which are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC 20555, and at the Oconee County Library, 501 West South Broad Street, Walhalla, South Carolina 29621. A copy of item (2) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects I/II.

Dated at Rockville, Maryland, this 14th day of April 1989.

For The Nuclear Regulatory Commission.

Darl S. Hood,

Project Manager, Project Directorate II-3, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 89-9487 Filed 4-19-89; 8:45 am]

BILLING CODE 7590-01-M

Docket No. 50-245

Northeast Nuclear Energy Co., Millstone Nuclear Power Station, Unit No. 1; Corrected Notice of Denial of Amendment to Facility Operating License and Opportunity for Hearing

On March 21, 1989, the U.S. Nuclear Regulatory Commission issued a Denial of Amendment to Facility Operating License and Opportunity for Hearing which was published in the **Federal Register** on March 28, 1989 (54 FR 12705). We are correcting that Denial because it contained typographical errors and omissions. The correct text is as follows:

The U.S. Nuclear Regulatory Energy Commission (the Commission) has denied a request by Northeast Nuclear Energy Company (licensee) to amend Facility Operating License No. DPR-21, issued for the operation of Millstone Nuclear Power Station, Unit No. 1, located in New London County, Connecticut. Notice of Consideration of Issuance of this amendment was published in the **Federal Register** on August 12, 1987 (52 FR 29923).

The purpose of the licensee's amendment request was to revise the Technical Specifications (TS) to allow containment deinerting and entry during power operations for testing, surveillance or maintenance of equipment "necessary to ensure safe plant operaton." Currently, the TS permit such activities only for equipment "important to safety." It is the staff's position that the current TS requirements for containment deinerting and entry are appropriate with regard to plant safety and personnel safety considerations.

The licensee was notified of the Commission's denial of the proposed TS amendment by a letter dated.

By May 22, 1989 the licensee may demand a hearing with respect to the denial described above. Any person whose interest may be affected by this proceeding may file a written petition for leave to intervene.

A request for hearing or petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date.

A copy of any petitions should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Gerald Garfield, Esquire, Day, Berry and Howard, Counselors at Law, City Place, Hartford, Connecticut 06103-3499, attorney for the licensee.

For further details with respect to this action, see: (1) The application for amendment dated June 1, 1987, and (2) the Commission's letter to the licensee dated April 10, 1989.

These documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the Waterford Public Library, 49 Rope Ferry Road, Waterford, CT 06385. A copy of item (2) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Document Control Desk.

Dated at Rockville, Maryland, this 10th day of April 1989.

For The Nuclear Regulatory Commission.

Michael L. Boyle,

Project Manager, Project Directorate I-4, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 89-9489 Filed 4-19-89; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-354]

Public Service Electric and Gas Co.; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (Commission) has issued Amendment No. 24. to Facility Operating License No. NPF-57 issued to Public Service Electric and Gas Company, which revised the Technical Specifications for operation of the Hope Creek Generating Station, located in Salem County, New Jersey. The amendment was effective as of the date of issuance.

The amendment revised the Technical Specifications' Table 3.3.3-3 to change the maximum allowed response time for the high pressure coolant injection system. The subject response time is the time allowed for the system to achieve rated flow following receipt of an initiation signal.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment and Opportunity for Prior Hearing in connection with this section was published in the **Federal Register** on October 21, 1988 (53 FR 41430). No request for a hearing or petition for leave to intervene was filed following this notice.

The Commission has prepared an Environmental Assessment related to the action and has determined not to prepare an environmental impact statement. Based upon the environmental assessment, the Commission has concluded that the issuance of this amendment will not have a significant effect on the quality of the human environment (April 5, 1989 (54 FR 13967)).

For further details with respect to the action see: (1) The application for amendment dated August 13, 1987, as supplemented August 12, 1989, (2) Amendment No. 24 to License No. NPF-57, and (3) the Commission's related Safety Evaluation and Environmental Assessment. All of these items are available for public inspection at the Commission's Public Document Room, 2120 L Street NW, and at the Pennsville Public Library, 190 S. Broadway, Pennsville, New Jersey 08070. A copy of items (2), and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Reactor Projects I/II.

Dated at Rockville, Maryland this 12th day of April 1989.

For The Nuclear Regulatory Commission.

Walter R. Butler,

Director, Project Directorate I–2, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 9488 Filed 4–19–89; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–346]

Toledo Edison Co., et al., Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 130 to Facility Operating License No. NPF–3, issued to The Toledo Edison Company and The Cleveland Electric Illuminating Company (the licensee), which revised the Technical Specifications for operation of the Davis-Besse Nuclear Power Station, Unit No. 1 (the facility) located in Ottawa County, Ohio. The amendment was effective as of the date of its issuance.

The amendment revised the Technical Specifications to allow fuel with a maximum enrichment of 3.80 weight percent Uranium–235 to be stored in new fuel storage locations and spent fuel storage locations in the existing fuel storage facilities at the plant.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the **Federal Register** on May 26, 1988 (53 FR 19071). No request for hearing or petition for leave to intervene was filed following this notice. Letters from the licensee dated December 16, 1988 and January 26, 1989 did not change the proposed amendment and a renotice was unnecessary.

For further details with respect to this action see: (1) The application for amendment dated April 11, 1988, as supplemented by letters dated December 16, 1988 and January 26, 1989, (2) Amendment No. 130 to License No. NPF–3, (3) the Commission's related Safety Evaluation dated and (4) the Environmental Assessment dated April 13, 1989 (54 FR 14894). All of these items are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC, and at the University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606.

A copy of items (2), (3) and (4) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects—III, IV, V and Special Projects.

Dated at Rockville, Maryland this 13th day of April 1989.

For The Nuclear Regulatory Commission.

Thomas V. Wambach, Sr.

Project Manager, Project Directorate III–3, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 89–9490 Filed 4–19–89; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. 34–26721; File No. SR–AMEX–89–7]

Self-Regulatory Organizations; American Stock Exchange, Inc.; Notice of Filing and Order Granting Temporary Accelerated Approval To Proposed Rule Change

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on April 10, 1989, the American Stock Exchange, Inc. ("Amex") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposes Rule Change

The Amex proposed to extend the current margin requirements for short equity and index options positions through July 17, 1989. The Amex's current margin requirements were approved in Securities Exchange Act Release No. 25701 (May 17, 1988), 53 FR 20706, for a six-month period. In Securities Exchange Act Release No. 26381 (December 21, 1988), 53 FR 52541, the Amex's margin requirements were extended for an additional three-month period.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Amex has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

On May 17, 1988, the Commission approved proposals by the Amex and the other options self-regulatory organizations ("SROs") to amend their rules to increase the customer margin requirements for short positions in equity and index options.[1] The proposals, which were approved for a six-month period, provided for margin requirements for broad-based index options of 100 percent of the option premium plus 15 percent of the underlying aggregate index value, less any out-of-the-money amount, with a minimum requirement of the option premium plus 10 percent of the underlying aggregate index value. The proposals provided for margin requirements for equity options and narrow-based index options of 100 percent of the option premium plus 20 percent of the underlying product value, less any out-of-the-money amount, with a minimum requirement of the option premium plus 10 percent of the underlying product value.

The Amex proposes to extend the current margin requirements until July 17, 1989 to permit implementation of a routine margin monitoring program expected to be instituted by the options SROs in the second quarter of 1989. The Amex believes that the proposed rule change is consistent with section 6(b)(5) of the act in that extending the current margin requirements until a routine margin monitoring program is implemented should assure both firms and investors reasonable financial protection even if market volatility increases during this period.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Amex does not believe that the proposed rule change will impose a burden on competition.

[1] Securities Exchange Act Release No. 25701, 53 FR 20706.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Comments were neither solicited nor received; however, the Amex stated that the Options Committee, a committee of the Amex Board of Governors comprised of members and representatives of member firms, has endorsed the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Amex has requested accelerated effectiveness of the proposal pursuant to section 19(b)(2) of the act to permit the uninterrupted effectiveness of the current margin levels. The Commission finds good cause for approving the proposed rule changes prior to the thirtieth day after the date of publication of the proposals in the Federal Register. The Amex's proposal extends current margin requirements that were noticed for the full thirty-day period and were approved by the Commission in Securities Exchange Act Release 25701 (May 17, 1988), 53 FR 20706. In light of the absence of any comments on the original proposal, the Commission believes that a good cause finding is warranted. In addition, the proposal merely extends the margin levels that have been in place for nine months, and prevents the margins from reverting back to levels that may be inconsistent with the routine margin monitoring program that is being developed.

The Commission finds that the proposed rule change is consistent with the requirements of the act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6(b)(5),[2] which provides, in pertinent part, that the rules of the exchanges must be designed to protect investors and the public interest. Extending the current margin requirements until a routine margin monitoring program is implemented should assure both firms and investors reasonable financial protection even if market volatility increases during this period. Moreover, the SROs have provided data to indicate that the current margin levels are adequate for prudential purposes.

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing also will be available for inspection and copying at the principal office of the above-referenced self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by May 9, 1989.

It is therefore ordered, Pursuant to section 19(b)(2) of the Act,[3] that the proposed rule change is approved for a period ending on July 17, 1989.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[4]

Dated: April 12, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-9531 Filed 4-19-89; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 34-26727; File No. SR-NASD-89-20]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Mandatory Participation in the Trade Acceptance and Reconciliation Service

Pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on March 29, 1989, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The NASD has designated this proposed rule change as one that constitutes an interpretation with respect to the enforcement of an existing rule under section 19(b)(3)(A)(i), which renders the interpretation effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change defers until July 1, 1989 full implementation of section 68 of the NASD Uniform Practice Code, which requires all NASD members that are participants in a registered clearing agency for purposes of clearing over-the-counter securities transactions to reconcile all eligible transactions through the facilities of the NASD's Trade Acceptance and Reconciliation Service ("TARS"). Section 68 was approved by the Commission on April 18, 1988 in Securities Exchange Act Release No. 25595. In addition, the NASD filed a proposed rule change that became effective upon filing on January 25, 1989 (Securities Exchange Act Release No. 26488), which amended Part IX, Section A.6 of Schedule D to the NASD By-Laws to establish a monthly fee for those TARS subscribers averaging fewer than 30 trades per day who access TARS through the NASD service desk.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the delay in fully implementing section 68 is to provide the time necessary to obtain appropriately executed service agreements from members and to have equipment installed and activated for those members where such equipment will be required. Due to limitations on the availability of equipment and particularly to delays in obtaining necessary telephone line installations, it is anticipated that the transitions will take approximately three more months. For this reason, the NASD has determined to delay full implementation of section 68 until July 1, 1989.

The statutory basis for the proposed rule change is found in section 15A(b)(6) of the Act, which provides that the rules

[2] 15 U.S.C. 78f(b)(5) (1982).

[3] 15 U.S.C. 78s(b)(2) (1982).

[4] 17 CFR 200.30-3(a)(12) (1988).

of a registered securities association be designed to facilitate transactions in securities and to remove impediments to and perfect the mechanism of a free and open market and a national market system for securities transactions. The NASD believes that the proposed rule change will facilitate the orderly implementaion of the rule requiring the mandatory use of TARS.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not anticipate that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Comments were neither solicited nor received with respect to the proposed rule change contained in this filing.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change is effective on filing pursuant to section 19(b)(3)(A)(i) of the Act in that it is a stated practice with respect to the implementation of section 68 of the NASD Uniform Practice Code. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Pubiic Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by May 9, 1989.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Dated: April 14, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-9532 Filed 4-19-89; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area No. 6749]

Alaska; Declaration of Disaster Loan Area

The Boroughs of Kodiak Island and Kenai Peninsula and the contiguous Boroughs of Anchorage, Dillingham, Matanuska-Susitna, and Valdez-Cordova in the State of Alaska, constitute an Economic Injury Disaster Loan Area due to economic losses resulting from the oil spill caused by the grounding of the *Exxon Valdez* on March 24, 1989. Eligible small businesses without credit available elsewhere and small agricultural cooperatives without credit available elsewhere may file applications for economic injury assistance until the close of business on January 10, 1990 at the address listed below:

Disaster Area 4 Office, Small Business Administration, P.O. Box 13795, Sacramento, CA 95853-4795

or other locally announced locations. The interest rate for eligible small business and small agricultural cooperatives is 4 percent. SBA must have evidence that the needed financial assistance is not available from Exxon or its agents before a small business may be considered for economic injury assistance.

Dated: April 10, 1989.

James Abdnor,

Administrator.

[FR Doc. 89-9389 Filed 4-19-89; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Areas # 2346 & # 2347]

Indiana and Contiguous Counties in the State of Illinois; Declaration of Disaster Loan Area

Gibson County, and the contiguous counties of Knox, Pike, Posey, Vanderburgh, and Warrick, in the State of Indiana, and Wabash and White Counties, in the State of Illinois, constitute a disaster area as a result of damages from tornadoes, high winds, heavy rainfall, and hail which occurred on April 3, 1989. Applications for loans for physical damage may be filed until the close of business on June 12, 1989 and for economic injury until the close of business on January 12, 1990 at the address listed below:

Disaster Area 2 Office, Small Business Administration, 120 Ralph McGill Blvd. 14th Fl. Atlanta, GA 30308

or other locally announced locations. The interest rates are:

	Percent
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	8.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Businesses and non-profit organizations (EIDL) without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	9.125

The numbers assigned to this disaster for physical damage are 234612 for the State of Indiana, and 234712 for the State of Illinois; and for economic injury the numbers are 675000 for the State of Indiana and 675100 for the State of Illinois.

Dated: April 12, 1989.

(Catalog of Federal Domestic Assistance Programs Nos. 59002 and 59008)

James Abdnor,

Administrator.

[FR Doc. 89-9390 Filed 4-19-89; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area # 2343; Amdt. No. 4]

Kentucky and Contiguous Counties in the States of Indiana, Ohio, West Virginia, Virginia, Illinois, Missouri, and Tennessee; Declaration of Disaster Loan Area

The above-numbered Declaration (54 FR 9584), as amended (54 FR 11602), (54 FR 13283), and (54 FR 14723), is hereby further amended in accordance with the Notice of Amendment to the President's declaration, dated March 23, 1989, to include the counties of Grayson, Johnson, and Rockcastle, in the Commonwealth of Kentucky, as a result of damages from severe storms and

flooding between February 13 and March 8, 1989.

All counties contiguous to the above-named primary counties have been previously declared as primary or adjacent counties for the same storms and flooding and are, therefore, eligible.

All other information remains the same; i.e., the termination date for filing applications for physical damage is the close of business on April 27, 1989, and for economic injury until the close of business on November 24, 1989.

Dated: March 29, 1989.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Bernard Kulik,

Deputy Associate Administrator for Disaster Assistance.

[FR Doc. 89-9391 Filed 4-19-89; 8:45 am]

BILLING CODE 8025-01-M

Region IV Advisory Council, Public Meeting; Alabama

The U.S. Small Business Administration, Region IV Advisory Council, located in the geographical area of Birmingham, will hold a public meeting 11:00 a.m. to 12:30 p.m. on Friday, May 12, 1989, at the Mobile Area Chamber of Commerce, 451 Government Street, Mobile, Alabama 36652, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call James C. Barksdale, District Director, U.S. Small Business Administration, 2121 8th Avenue, North, Suite 200, Birmingham, Alabama 35203, phone (205) 731-1341.

Jean M. Nowak,

Director, Office of Advisory Councils.

April 12, 1989.

[FR Doc. 89-9392 Filed 4-19-89; 8:45 am]

BILLING CODE 8025-01-M

Region IX Advisory Council, California; Public Meeting

The U.S. Small Business Administration, Region IX Advisory Council, located in the geographical area of San Francisco, will hold a public meeting 10:00 a.m. Friday, May 19, 1989, at the Napa Chamber of Commerce, Napa, California to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call J. Mark Quinn, Acting District Director, U.S. Small Business Administration, San Francisco District Office, 211 Main Street, 4th Floor, San Francisco, California 94105, phone (415) 974-0642.

Jean M. Nowak,

Director, Office of Advisory Councils.

April 12, 1989.

[FR Doc. 89-9393 Filed 4-19-89; 8:45 am]

BILLING CODE 8025-01-M

Region IV Advisory Council, Florida; Public Meeting

The U.S. Small Business Administration, Region IV Advisory Council, located in the geographical area of Jacksonville, will hold a public meeting 9:30 a.m. to 2:30 p.m. on Thursday, April 27, 1989, in the Sun Bank Tower Building, "C" Training Room, 2nd Floor, 200 S. Orange Avenue, Orlando, Florida 32801, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Thomas M. Short, District, Director, U.S. Small Business Administration, Jacksonville District Office, 400 West Bay Street, Box 35067, Jacksonville, Florida 32202-4441; telephone (904) 791-3102.

Jean M. Nowak,

Director, Office of Advisory Councils.

April 5, 1989.

[FR Doc. 89-9394 Filed 4-19-89; 8:45 am]

BILLING CODE 8025-01-M

Region IV Advisory Council, Georgia; Public Meeting

The U.S. Small Business Administration, Region IV Advisory Council, located in the geographical area of Atlanta, will hold a public meeting from 1:00 p.m. on Thursday, April 20, 1989, through 11:30 a.m. on Friday, April 21, 1989 at the AmeriBank, N. A., 7393 Hodgson Memorial Drive, Savannah, Georgia 31416 to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Wilfred A. Stone, District Director, U.S. Small Business Administration, 1720 Peachtree Road, NW., 6th Floor, Atlanta, Georgia 30309, Phone (404) 347-4749.

Jean M. Nowak,

Director, Office of Advisory Councils.

April 12, 1989.

[FR Doc. 89-9395 Filed 4-19-89; 8:45 am]

BILLING CODE 8025-01-M

Region IX Advisory Council, Hawaii; Public Meeting

The U.S. Small Business Administration, Region IX Advisory Council, located in the geographical area of Honolulu will hold a public meeting at 9:00 a.m., on Thursday, May 11, 1989, at the Prince Kuhic Federal Building, 300 Ala Moana Boulevard, Conference Room 5311, Honolulu, Hawaii 96850 to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Charles T. C. Lum, District, Director, U.S. Small Business Administration, 300 Ala Moana Boulevard, Room 2213, Honolulu, Hawaii 6850, phone (808) 541-2990.

Jean M. Nowak,

Director, Office of Advisory Councils.

April 12, 1989.

[FR Doc. 89-9396 Filed 4-19-89; 8:45 am]

BILLING CODE 8025-01-M

Region V Advisory Council, Michigan; Public Meeting

The U.S. Small Business Administration, Region V Advisory Council, located in the geographical area of Detroit, will hold a public meeting at 10:00 a.m. EDT on Thursday, May 4, 1989, at the Novi Hilton Hotel 21111 Haggerty Road, Novi, Michigan, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Richard Temkin, Deputy District Director, U.S. Small Business Administration, 477 Michigan Avenue, Detroit, Michigan 48226, phone (313) 226-7240.

Jean M. Nowak,

Director, Office of Advisory Councils.

April 12, 1989.

[FR Doc. 89-9397 Filed 4-19-89; 8:45 am]

BILLING CODE 8025-01-M

Region VIII Advisory Council, Utah; Public Meeting

The U.S. Small Business Administration, Region VIII Advisory Council, located in the geographical area of Salt Lake City, will hold a public meeting from 10:00 a.m. to 11:30 a.m. on Thursday, May 4, 1989, at the Salt Lake Community College, Conference and Convention Center, 4600 South Redwood Road, Salt Lake City, Utah, to discuss such matters as may be

presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Thomas E. Bergdoll, Acting District Director, U.S. Small Business Administration, Salt Lake City District Office, Wallace F. Bennett Federal Building, 125 South State Street, Room 2237, Salt Lake City, Utah 84138–1195 or phone (801) 524–5804.

Jean M. Nowak,

Director, Office of Advisory Councils.

April 5, 1989.

[FR Doc. 89–9398 Filed 4–19–89; 8:45 am]

BILLING CODE 8025–01–M

Region III Advisory Council, West Virginia; Public Meeting

The U.S. Small Business Administration, Region III Advisory Council, located in the georgraphical area of Clarksburg, will hold a public meeting from 1:00 p.m. to 4:30 p.m. on Tuesday, May 2, 1989, and 9:00 a.m. to 12:00 p.m. on Wednesday, May 3, 1989 at the Travelodge Charleston-Dunbar, (Dunbar, I–64, Exit 53 next to Shoney's), 1007 Dunbar Avenue, Dunbar, West Virginia, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Marvin P. Shelton, Disrict Director, U.S. Small Business Administration, P.O. Box 1608, Clarksburg, West Virginia 26302–1608, or phone (304) 622–6601.

Jean M. Nowak,

Director, Office of Advisory Councils.

April 5, 1989.

[FR Doc. 89–9399 Filed 4–19–89; 8:45 am]

BILLING CODE 8025–01–M

Region VIII Advisory Council, Wyoming; Public Meeting

The U.S. Small Business Administration, Region VIII Advisory Council, located in the geographical area of Casper will hold a public meeting at 9:00 a.m., on Tuesday, May 9, 1989, at the Tower West Lodge, 109 North U.S. Highway 14–16, Gillette, Wyoming to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Paul W. Nemetz, District Director, U.S. Small Business Administration, Casper District Office, Federal Building, Room 4001, 100 East B Street, P.O. Box 2839, Casper, Wyoming 82602–2839 or phone (307) 261–5761.

Jean M. Nowak,

Director, Office of Advisory Councils.

April 5, 1989.

[FR Doc. 89–9400 Filed 4–19–89; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

The Anchorage Bowl Airspace Design and Utilization Review; Public Meetings

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of public meetings; extension of comment periods.

SUMMARY: This notice announces a series of fact-finding meetings to gather additional information from airspace users and others concerning the Anchorage Bowl Airspace Design and Utilization Review. The present airspace configuration is a combination of a non-standard airport radar service area (ARSA), modified airport traffic areas (ATA), and control zones. Discussions with airspace users during 1988 produced a consensus view that aviation safety would be enhanced if an overall review of Anchorage Bowl airspace usage and air traffic management would be conducted. It should not be construed that a decision has been made to pursue change(s) through regulatory action, all the comments received in these meetings will be considered prior to the issuance of a notice of proposed rulemaking (NPRM). The objective of these meetings is to provide the opportunity to gather additional facts relevant to the aeronautical effects of proposals, and provide interested persons an opportunity to discuss objections to any proposals.

DATES: Comments must be received on or before 45 days following each meeting. The public meetings will be held on June 21, 1989, and September 20, 1989, in Anchorage, AK.

ADDRESSES: Send or deliver comments in duplicate to: Federal Aviation Administration, Anchorage Airspace Review, Attention: Air Traffic Division (AAL–500), 222 W. Seventh Avenue, P.O. Box 14, Anchorage, AK 99513–7587.

The public meeting locations are as follows:

Date: June 21, 1989, and September 20, 1989

Time: 6:00 p.m.

Location: Z. J. Loussac Public Library, Wilda Marston Theatre, Level 1, 3600 Denall Street, Anchorage, AK

FOR FURTHER INFORMATION CONTACT: Jim Titus, Plans, Programs and Resources Branch (AAL–510), Air Traffic Division, 222 W. Seventh Avenue, P.O. Box 14, Anchorage, AK 99513–7587; telephone: (907) 271–5884.

SUPPLEMENTARY INFORMATION:

Objective/Followup Process

Public participation in these fact-finding meetings and comment periods will promote development of an appropriate, minimally restrictive, and efficient plan for use of the Anchorage Bowl airspace. If the review results in a proposal for designation, alteration, or revocation of airspace by rule, regulation or order, at least one additional informal airspace meeting will be conducted in Anchorage. The notice of the meeting will be published a minimum of 60 days in advance and will describe the proposal in sufficient detail, including charts, if necessary, to enable interested persons to prepare comments prior to the meeting.

Meeting Procedures

(a) The meetings will be informal in nature and will be conducted by representatives of the FAA Alaskan Region, and members of the FAA Anchorage Bowl Airspace Review Team (ABART). Representatives from the FAA will present a formal briefing on identified problems and proposals for change that have been received from the public. All other participants will be given an opportunity to make a presentation.

(b) The meetings will be open to all persons on a space-available basis. All efforts will be made to provide a meeting site with sufficient seating capacity for the expected participation. There will be no admission fee or other charge to attend and participate.

(c) Any person wishing to make a presentation to the FAA Team will be asked to sign in and estimate the amount of time needed for such presentation. This will permit the Team to allocate an appropriate amount of time for each presenter. The Team may allocate the time available for each presentation in order to accommodate all speakers. The meeting will not be adjourned until everyone on the list has had an opportunity to address the panel. The meeting may be adjourned at any time if all persons present have had the opportunity to speak.

(d) Any person who wishes to present a position paper to the Team pertinent to the topic of the Anchorage Bowl

Airspace Review for consideration and public presentation may do so.

(e) Persons wishing to hand out pertinent position papers to the attendees should present two copies to the presiding officer. There should be additional copies of each handout available for other attendees.

(f) The meetings will not be formally recorded. However, informal tape recordings will be made of presentations to ensure that each respondent's comments are accurately noted. A summary of the comments at each meeting will be made available to all interested parties.

Materials relating to the Anchorage Bowl Airspace Design and Utilization Review will be accepted at the individual meetings. Every reasonable effort will be made to hear every request for presentation consistent with a reasonable closing time for the meeting. Written materials may also be submitted to the Team up to 45 days after the close of the last meeting.

Agenda

Opening Remarks and Discussion of Meeting Procedures
Briefing on Identified Problems and Change Proposals
Public Presentations
Closing Comments.

Issued in Washington, DC, on April 14, 1989.

William C. Davis,

Acting Manager, Airspace—Rules and Aeronautical Information Division.

[FR Doc. 89-9434 Filed 4-19-89; 8:45 am]

BILLING CODE 4910-13-M

Maritime Administration

[Docket No. S-848]

Coastal Barge Corp.; Application for Permission Under Section 506 of the Merchant Marine Act, 1936, as Amended To Operate in the Domestic Trade

Notice is hereby given that Coastal Barge Corporation (Coastal) by application dated April 12, 1989, has applied for written permission under section 506 of the Merchant Marine Act, 1936, as amended (Act), for the temporary transfer of the LASH ATLANTICO to a purely domestic service to assist Exxon Shipping Company (Exxon) in the oil-spill clean-up operation related to the EXXON VALDEZ grounding in Alaska. Section 506 permits the temporary transfer for up to six months of construction-differential subsidy (CDS) built vessels "whenever the Secretary determines that such transfer is necessary or appropriate to carry out the purposes of the Act." Consent by the Maritime Administration (MARAD) is to be conditioned upon payment to MARAD, upon such terms as MARAD may prescribe, of "an amount which bears the same proportion to the CDS paid by the Secretary as such temporary period bears to the entire economic life of the vessel."

Coastal's request is precipitated by the emergency oil-spill clean-up operations necessitated by the recent environmental disaster caused by the grounding of the EXXON VALDEZ in Prince William Sound, Alaska. The LASH ATLANTICO is under firm offer to Exxon for charter for a period up to six months to assist in the mobilization and demobilization of emergency equipment and supplies, the distribution and collection of barges along the littoral areas impacted by the oil spill, and transportation of oily slops and materials to a processing/clean-up site or sites. Coastal notes that the specific applications of the LASH vessel's unique capabilities to assist in addressing the environmental challenges in Alaska are not entirely known as of this date.

Coastal envisions that the LASH ATLANTICO will be employed during much of the time as a distribution vehicle for clean-up barges and equipment along the hundreds of miles of fouled beaches. The vessel's loading and unloading capabilities will be of particular importance. Moreover, in light of the changing weather conditions in Alaska, the vessel's speed in excess of 20 knots may prove of significant value to the protection of life, equipment, and the local environment.

In light of the emergency situation in Alaska and the negotiations currently underway with Exxon which are fundamentally affected by the granting of the waiver requested herein, Coastal would appreciate MARAD's promptest possible determination.

Coastal must comply with any Coast Guard regulations relating to operating the LASH barges.

Although publication of a Notice with respect to Coastal's request for permission under section 506 is not required, the Maritime Administration believes that it is appropriate to provide an opportunity for interested parties to comment on Coastal's application.

Any person, firm, or corporation having any interest in the application for section 506 permission and desiring to submit comments concerning the application must file written comments in triplicate, to the Secretary, Maritime Administration, Room 7300, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590, by the close of business on April 26, 1989. The Maritime Administration, as a matter of discretion, will consider any comments submitted and take such action with respect thereto as may be deemed appropriate.

(Catalog of Federal Domestic Assistance Program No. 20.800 Construction-Differential Subsidies (CDS))

By order of the Maritime Administrator.

Dated: April 14, 1989.

James E. Saari,

Secretary

[FR Doc. 89-9401 Filed 4-19-89; 8:45 am]

BILLING CODE 4910-81-M

DEPARTMENT OF THE TREASURY

Office of the Secretary

[Supplement to Department Circular—Public Debt Srles—No. 10-89]

Treasury Notes, Series F-1996

Washington, April 13, 1989.

The Secretary announced on April 12, 1989, that the interest rate on the notes dsignated Series F-1996, described in Department Circular—Public Debt Series—No. 10-89 dated April 6, 1989, will be 9⅜ percent. Interest on the notes will be payable at the rate of 9⅜ percent per annum.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 89-9417 Filed 4-19-89; 8:45 am]

BILLING CODE 4810-40-M

[Number: 102-10]

Delegation of Authority to the Deputy Assistant Secretary for Information Systems To Waive Federal Information Processing Standards

Date: March 17, 1989.

By virtue of the authority vested in me as Secretary of the Treasury, including the authority vested in me by 31 U.S.C. 321(b) and authority delegated to me by memorandum of November 14, 1988 from the Secretary of Commerce, there is hereby redelegated to the Deputy Assistant Secretary for Information Systems, as the Treasury senior official designated pursuant to section 3506(b) of title 44 of the U.S. Code, the authority to waive, under conditions specified by the Department of Commerce, previously issued and all subsequent Federal Information Processing Standards (FIPS) that are compulsory for Federal agency use in the acquisition

and management of computers and related telecommunications systems. This authority may not be redelegated.

Nicholas F. Brady,

Secretary of the Treasury.

[FR Doc. 89-9426 Filed 4-19-89; 8:45 am]

BILLING CODE 4810-25-M

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition; Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 F.R. 13359, March 29, 1978), and Delegation Order No. 85-5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit, "Mary Cassatt: The Color Prints" (see list [1]) imported from abroad for the temporary exhibition without profit within the United States are of cultural significance. These objects are imported pursuant to loan agreements with the foreign lenders. I also determine that the temporary exhibition or display of the listed exhibit objects at the National Gallery of Art in Washington, DC, beginning on or about June 18, 1989, to on or about August 27, 1989, at The Museum of Fine Arts, Boston, Massachusetts, beginning on or about September 9, 1989, to on or about November 5, 1989, and at the Williams College Museum of Art, Williamstown, Massachusetts, beginning on or about November 25, 1989, to on or about January 21, 1990, is in the national interest.

Public notice of this determination is ordered to be published in the **Federal Register.**

R. Wallace Stuart,

Acting General Counsel.

Date: April 13, 1989.

[FR Doc. 89-9540 Filed 4-19-89 8:45 am]

BILLING CODE 8230-01-M

[1] A copy of this list may be obtained by contacting Mr. R. Wallace Stuart of the Office of the General Counsel of USIA. The telephone number is 202-485-7979, and the address is Room 700, U.S. Information Agency, 301 4th Street SW., Washington, DC 20547.

Sunshine Act Meetings

Federal Register
Vol. 54, No. 75
Thursday, April 20, 1989

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

BOARD FOR INTERNATIONAL BROADCASTING

TIME AND DATE: 9:00 a.m. May 15, 1989.

PLACE: Radio Free Europe/Radio Liberty, Inc., Oettingenstrasse 67, Am Englischen Garten, 8000 Munich 22, Germany.

STATUS: Closed, pursuant to 5 U.S.C. 552(b)(c)(1) 22 CFR 1302.4 (c) and (h) of the Board's rules (42 FR 9388, March 12, 1977).

MATTERS TO BE CONSIDERED: Matters concerning the broad foreign policy objectives of the United States Government.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Mark G. Pomar, Deputy Executive Director, Board for International Broadcasting, Suite 400, 1201 Connecticut Avenue, NW., Washington, DC 20036.

Mark G. Pomar,

Deputy Executive Director.

[FR Doc. 89-9609 Filed 4-18-89; 2:10 am]

BILLING CODE 6155-01-M

U.S. COMMISSION ON CIVIL RIGHTS

April 18, 1989.

PLACE: 1121 Vermont Avenue, NW., Room 516, Washington, DC 20425.

DATE AND TIME: Friday, April 28, 1989, 9:00 a.m.–5:00 p.m.

STATUS OF MEETING: Portion open to the public and portion closed.

MATTERS TO BE CONSIDERED:

Agenda

I. Approval of Agenda
II. Approval of Minutes of March Meeting
III. Announcements
IV. SAC Reports and Recharters
  Nutrition Services for Minority Elderly; Census Data and Hispanic Elderly; and State Grant-in-Aid Program (Delaware)
  The Impact of Two Consent Decrees on Employment at Major Hotels/Casinos in Nevada
  Desegregation of Public Higher Education in Tennessee
  Colorado SAC Recharter
  Delaware SAC Interim Appointment
  District of Columbia SAC Interim Appointments
  West Virginia SAC Interim Appointment
V. Commission Reauthorization Discussion
VI. Project Proposal—*Window Dressing on the Set: The Sequel*
VII. Commission Subcommittee Reports
  A. ICRA
  B. Regional Forums
  C. Medical Discrimination Against Children With Disabilities
  D. Set-aside Draft
  E. Asian Roundtable
  F. Proposals Presented to the Conservative Opportunity Society
VIII. Staff Director's Report
  A. Briefing—Bigotry and Violence on College Campuses
  B. Discussion—New Perspectives
  C. Incomes Study
  D. Testing Consultation
  E. Civil Rights Monitoring—U.S. Department of Education
  F. Immigration Report
IX. Future Agenda Items
X. Executive Session closed to the public at end of public meeting to discuss personnel matters

PERSON TO CONTACT FOR FURTHER INFORMATION: John Eastman, Press and Communications Division, (202) 376–8312.

William H. Gillers,

Solicitor.

[FR Doc. 89-9571 Filed 4-18-89; 11:53 am]

BILLING CODE 6335-01-M

Federal Register

Thursday
April 20, 1989

Part II

Department of Labor

Employment and Training Administration

20 CFR Part 639

Worker Adjustment and Retraining Notification; Final Rule

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Part 639

Worker Adjustment and Retraining Notification

AGENCY: Employment and Training Administration, Labor.

ACTION: Final rule.

SUMMARY: The Employment and Training Administration of the Department of Labor is publishing a final regulation carrying out the provisions of the Worker Adjustment and Retraining Notification Act (WARN). WARN provides that, with certain exceptions, employers of 100 or more workers must give at least 60 days' advance notice of a plant closing or mass layoff to affected workers or their representatives, to the State dislocated worker unit, and to the appropriate local government.

EFFECTIVE DATE: May 22, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. Robert N. Colombo, Director, Office of Employment and Training Programs, Employment and Training Administration, Department of Labor, Room N4469, 200 Constitution Avenue NW., Washington, DC 20210. Telephone: (202) 535-0577.

SUPPLEMENTARY INFORMATION:

Introduction

The Worker Adjustment and Retraining Notification Act (WARN, the statute, or the Act), Pub. L. 100-379, 102 Stat. 890, was enacted on August 4, 1988. 29 U.S.C. 2101 et seq. Section 11 of the Act provides that WARN goes into effect on February 4, 1989. WARN provides that, with certain exceptions, employers of 100 or more workers must give at least 60 days' advance notice of a plant closing or mass layoff to affected workers or their representatives, to the State dislocated worker unit (see 29 U.S.C. 1661(b)(2)), and to the appropriate local government. 29 U.S.C. 2902 and 2903. Section 8(a) of the Act requires that the Secretary of Labor "prescribe such regulations as may be necessary to carry out this Act. Such regulations shall, at a minimum, include interpretative regulations describing the method by which employers may provide for appropriate service of notice as required by this Act." 29 U.S.C. 2107(a). Under section 11 of the Act, the authority to issue regulations for WARN became effective on August 4, 1988.

The Employment and Training Administration (ETA) of the Department of Labor (DOL or Department), since the enactment of WARN, has published in the **Federal Register** for comment various notices, a discussion paper, an interim interpretative rule and a proposed rule on WARN. 53 FR 34844 (September 8, 1988); 53 FR 36056 (September 16, 1988); 53 FR 38026 (September 29, 1988); 53 FR 39403 (October 6, 1988); 53 FR 43731 (October 28, 1988); 53 FR 48884 (December 2, 1988); and 53 FR 49076 (December 5, 1988). After full consideration of public comments received in response to the notices, discussion paper, interim interpretative rule and proposed rule, ETA is publishing this final rule.

Prior Actions

On September 16, 1988, the Department published a notice in the **Federal Register** inviting comments from interested parties regarding: "(1) The extent to which the Department should issue interpretive regulations; and (2) To the extent that regulations are needed, the specific views of commenters on how particular sections of the law should be implemented through regulations."

A total of 63 letters was received from employer associations, companies, law firms, unions, employee associations, Members of Congress, State officials, and a private citizen. Commenters strongly encouraged DOL to publish regulations to explain how WARN would be implemented and to clarify WARN provisions they found ambiguous. Commenters also requested that DOL address a number of specific items and define particular terms.

On October 28, 1988, the Department published the WARN Discussion Paper in the **Federal Register** and solicited comments. This paper reviewed sections 2, 3, 4, and 11 of the statute, discussing questions raised in comments on the September 16, 1988 Notice and issues addressed in the legislative history.

DOL received 62 comment letters in response to the October 28 Discussion Paper from employer associations, employers, labor unions, law firms, a State governmental agency, four members of Congress who were legislative sponsors, and another member of Congress. Commenters generally expressed agreement with the scope of the issues presented and many of the tentative positions covered in the Discussion Paper. Commenters did raise specific points of disagreement, posed additional questions, sought information about the application of WARN in specific situations, and provided examples.

On December 2, 1988 and December 5, 1988, the Department published an interim interpretative rule effective through April 1, 1989, and a proposed rule, respectively, implementing the provisions of WARN and soliciting comments (these documents will be referred to as the proposed rule or regulation). 53 FR 48884 and 53 FR 49076. The rules were identical. In their preambles, the Department discussed issues under the Act and comments received in response to the October 28, 1988 Discussion Paper. DOL received 82 letters of comment on the interim interpretative and proposed rules from employer associations, employers, labor unions, City governments, government interest groups, professional associations, four members of Congress who were legislative sponsors, a municipal utility and a Federal agency. The comments were fully considered, along with the written comments on the September 16, 1988 Notice and the October 28, 1988 Discussion Paper, in ETA's development of this final rule. The comments are discussed at considerable length in order to make clear the Department's interpretation of WARN through these final regulations and of their application to some of the problems that may arise in implementing the Act. At various points in this preamble the Department, in response to comments, has provided advice to employers on methods by which WARN liability may be avoided. This advice is for guidance only and should not be interpreted to impose any new or additional standards or requirements on employers.

Analysis of Final Rule and Comments

(1) General Issues

(a) Organization of Regulations

The Department has written and presented the WARN regulations so they will be understandable, and offer guidance to readers in the business and labor communities. Issues are discussed in their logical sequence, in an effort to easily convey the intent of the Act and employers' responsibilities.

(b) Scope and Purpose

These regulations cover sections 2, 3, and 4 of the Worker Adjustment and Retraining Notification Act. Section 2 of the Act provides necessary definitions and exclusions. Section 3 creates the notice requirement, describes the service of notice, sets forth the legal bases for providing reduced notice, provides for the extension of a layoff period, and specifies the consideration of employment losses over a 90-day period in determining whether some employers are covered by WARN

requirements. Section 4 outlines two exemptions to coverage of plant closings and mass layoffs.

(c) General Comments

A commenter suggested that the final regulations should only deal with what WARN requires, not what the Department encourages. In developing these final regulations, DOL has attempted to faithfully follow the language and intent of WARN. The Department also has been aware that some of the provisions of WARN may be ambiguous. In an effort to assist the public in avoiding unintentional noncompliance, DOL has tried to point out potential problems and in some cases has suggested methods of compliance.

A commenter suggested that DOL should not regard the comments of four of the Congressional sponsors, who commented both on the Discussion Paper and on the proposed regulations, as legislative history and should disregard those comments. The Department agrees that these comments do not have the force of legislative history. On the other hand, there is no reason to disregard them. They have been treated as any other comments.

A commenter suggested that the final regulations should contain specific citations to the legislative history for clarity and to preclude litigation. DOL agrees that citations may be useful and has provided them.

(2) Section 639.1 Purpose and Scope

(a) Section 639.1(a) Purpose of WARN

This section gives a brief overview of the purpose of the Act. None of the comments discussed this provision and it remains unchanged in the final regulations.

(b) Section 639.1(b) Scope of These Regulations

This section discusses the Department's intent in developing these regulations. None of the comments discussed this provision and it remains unchanged in the final regulations.

(c) Section 639.1(c) Notice Encouraged Where Not Required

This section quotes the statutory provision reflecting the intent of Congress that notice be provided even where not required by WARN. None of the comments discussed this provision and it remains unchanged in the final regulations.

(d) Section 639.1(d) WARN Enforcement

This provision discusses the WARN enforcement scheme. Commenters suggested that the regulations should include interpretations of several of the provisions of § 5 of WARN, which contains the enforcement provisions. Specifically, it was suggested that the regulations should discuss the "buy-out" provisions of sections 5(a) (2) and (3), which provide that an employer may reduce its monetary liability for violations of WARN by the amounts of certain payments made to or on behalf of the affected workers. One of the commenters also suggested that the regulations should discuss the basis for calculating the amount of monetary liability and should distinguish between violations of the Act from failure to give notice and violations for giving notice in a "technically deficient fashion".

The Department believes that in the unique WARN enforcement scheme, under which all enforcement will occur in the context of private civil lawsuits, it is inappropriate for the Department to regulate with respect to these issues. These matters have been left solely to the courts to decide.

The Department generally agrees with the comment that technical violations of the notice requirements not intended to evade the purposes of WARN ought to be treated differently than either the failure to give notice or the giving of notice intended to evade the purposes of the Act. The final regulations, in § 639.7(a)(3), include language to make it clear that inadvertent errors and factual errors which occur because of subsequent changes in events are not intended to be violations of the regulations. Other kinds of violations, i.e., the failure to provide information required in these regulations, may constitute a violation of WARN.

The proposal referred to these rules as interpretative regulations. Upon re-evaluation, this reference has been eliminated in the final regulation. The final regulation reflects the Department's careful consideration of the issues raised in this rulemaking and extensive analysis of the numerous comments it has received.

(e) Section 639.1(e) Notice in Ambiguous Situations

This section discusses the desirability of giving notice in situations where questions may arise about the applicability of WARN. While no comments were received which directly discussed this provision, DOL has received numerous comments and questions which illustrate the principle of this provision and demonstrate the existence of a possible source of confusion for some employers. These comments inquire about whether or not an employer planning a plant closing or mass layoff is covered because of some events which may occur between the date that notice is required to be given and the date of the event. An example of a typical inquiry is: an employer is planning to close a unit which employs 55 people; the employer will subsequently offer early retirement incentives to some of these employees, six of whom accept the early retirements before the termination occurs; since only 49 workers will finally be terminated is there a covered plant closing? Technically, the correct answer may be that no covered plant closing will have occurred (assuming, of course, that other actions within the 30- or 90-day aggregation periods provided in WARN do not trigger coverage). However, an employer has to make a decision on whether or not to give notice based on what it *knows* 60 or more days before the plant closing or mass layoff will occur. If, as in this example, at the time the decision to give notice has to be made, the employer is not certain that its early retirement incentives will be accepted or how many workers will accept early retirement, the employer is best advised to give notice. If the employer "gambles" that a sufficient number of employees will accept the offer and "loses', the employer's cost will be 60 days' pay and benefits to at least 50 workers. If the employer gives notice, the cost will be the cost of preparing and mailing 55 notices. Given the relative costs involved, the employer is best advised to give notice unless it is *certain, at the time it must decide to give notice,* that there is no possibility of coverage.

Because of this possible source of confusion, DOL has strengthened the language of this recommendation.

(f) Section 639.1(f) Coordination With Job Placement and Retraining Programs

This provision discusses coordination with other DOL programs aimed at providing assistance to dislocated workers. None of the comments discussed this provision and it remains unchanged in the final regulations.

(g) Section 639.1(g) WARN Not to Supersede Other Laws and Contracts

This provision discusses the requirement of § 6 of WARN that the provisions of the Act "are in addition to, and not in lieu of, any other contractual and statutory rights of the employees". In the preamble to the proposed regulations, DOL solicited comments on: (1) Whether and to what extent the final regulations might provide that collective bargaining agreements which provide for terms different from the terms

incorporated into the WARN regulations may be used as legitimate alternative methods of Compliance with WARN; and (2) whether such a provision should apply only to collective bargaining agreements that are entered into after the effective date of WARN or whether agreements that predate WARN also should be included. DOL received a number of comments on this issue. Some commenters supported broad application of collective bargaining agreements to define the terms of WARN. Other commenters opposed any application of collective bargaining agreements to alter or modify the provisions of WARN.

After considering comments received, the Department concludes that the WARN requirements stand by themselves and cannot be set aside in favor of collective bargaining agreements, regardless of whether such agreements were entered into before or after the effective date of WARN. However, where collective bargaining agreements include provisions which are consistent with and not inferior to WARN requirements, application of those provisions to further define or clarify WARN terms in a specific context would satisfy WARN. For example, WARN requires that notice of a mass layoff be provided at least 60 days in advance to affected employees or their representatives, to the State dislocated worker unit, and to a unit of local government. If a collective bargaining agreement provides for an employer to issue written notice to the union representing the affected workers 10 days prior to an anticipated layoff, this provision will not satisfy the WARN requirements for 60-day advance notice to the union representing the workers. But if the contract provides for an employer to issue written notice to the union 75 days in advance of anticipated layoffs, that provision will satisfy the WARN requirement for 60-day advance notice.

The Department also recognizes that certain of the provisions of WARN involves subjects which are typically covered in collective bargaining agreements. For example, the definition of the term "operating unit" depends on the organizational and functional structure of each plant, a matter often covered under seniority or other provisions of collective bargaining agreements. Similarly, WARN provides that a worker does not experience an employment loss if the employer offers to transfer the worker to a job at a different site within a reasonable commuting distance. The definition of the term "reasonable commuting distance" is a flexible one intended to take local conditions into consideration. If a collective bargaining agreement includes provisions for transfers and stipulates what constitutes reasonable commuting distance, that definition should control; it is the parties' agreement on the meaning of the term in the local conditions. Also, the collective bargaining agreements often will help in defining whether certain of the exceptions to the general definition of "single site of employment" are applicable.

(3) Section 639.2 What Does WARN require?

This section provides a brief overview of the WARN notice scheme. None of the comments discussed this provision and it remains unchanged in the final regulations.

(4) Section 639.2 Definitions

(a) Section 639.3(a) Definition of "Employer"

This provision provides a definition of the term "employer". It repeats the statutory definition of the size threshold for coverage under WARN as an employer and specifies which workers are counted in making coverage determinations; it makes it clear that private nonprofit organizations, as well as for-profit entities, are covered; it discusses the status of independent contractors and subsidiaries as separate employers; and it clarifies that an employer is defined in terms of the overall corporate or business entity, not in terms of any particular plant.

In the preamble to the proposed regulations, DOL requested comments on whether agencies of State and local government which are independent and perform business activities should be covered. Several commenters opposed inclusion of these entities, arguing that the statutory definition of employer as a "business enterprise" is inapplicable to government agencies, that the tax payment test for notice to local governments is inapplicable to agencies of local government and that any definition would sweep too broadly and include school boards and similar entities. Other commenters supported inclusion as consistent with the intent of WARN to broadly protect workers against dislocation. Because of the use of the term "business enterprise", DOL concludes that regular Federal, State, and local government public agencies and services are outside the purview of WARN. For completeness, federally recognized Indian tribal governments have also been added to the list of governments not covered by WARN. The legislative history is not helpful on the specific question of coverage of public and quasi-public business enterprises. DOL agrees that the underlying intent of WARN is worker protection. Given the nature and the language of the law, DOL concludes that the term "business enterprise" used in the statute includes public and quasi-public entities which engage in business (i.e., take part in a commercial or industrial enterprise; supply a service or good on a mercantile basis, or provide independent management of public assets, raising revenue and making desired investments). Whether a particular public or quasi-public entity is covered will be determined by the functional test described above and by an organizational test, i.e., whether the entity is managed by a separately organized governing body with independent authority to manage its personnel and assets. It should be noted that DOL has not defined covered public enterprises in terms of the traditional/non-traditional governmental functions distinction that was rejected by the Supreme Court as unworkable in *Garcia v. San Antonio Metropolitan Transit Authority*, 469 U.S. 528 (1984). The test that has been adopted is intended to be a relatively precise one that will include such entities as regional transportation authorities and independent municipal utilities, but will exclude such organizations as school boards. Several commenters pointed out that the phrase in § 639.3(a)(1), defining additional workers who are counted in determining whether an employer meets the coverage threshold, "[w]orkers on temporary layoff who have a reasonable expectation of recall" needs further definition. Particularly, commenters from the construction industry pointed out that when construction crafts workers are laid off at the end of a project, they expect to be reemployed within the construction industry, but not necessarily with the same employer. DOL agrees with the commenters that further definition of the phrase is appropriate and has added a definition. A worker is considered to have a "reasonable expectation of recall" if the worker "understands, either through notification or industry practice, that his/her employment with the employer has been temporarily interrupted and that he/she will be recalled to the same or a similar job." This definition, derived from case law under the National Labor Relations Act (NLRA), is intended to cover those situations in which, for a variety of reasons, workers are laid off with the understanding that they will be called back at a later date. The

definition is intended to be applied in accordance with the case law developed under the NLRA.

Another commenter suggested that the regulations should define the status of workers who are on leave from their employers. DOL thinks that the same rules apply to these workers as apply to workers in layoff status, that is, whether workers on leave from an employer understand that their leave status constitutes a temporary interruption of their job and that they have rights upon the conclusion of their leave to return to the same or a substantially similar job with the employer. Language has been added in § 639.3(a)(1) to include workers on leave within the category of workers who may be counted for determining the coverage thresholds for the definition of employer.

Several commenters raised questions about the definition of "[i]ndependent contractors and subsidiaries" in § 639.3(a)(2). Some of these commenters suggested that the definition should be simplified to treat subsidiaries as separate employers as long as they are "bona fide separate and distinct companies and hold themselves out to the public as such"; or to define as separate companies entities that have separate payroll functions. One commenter requested special treatment for the garment industry because of the peculiar relationship of jobbers and contractors within that industry. Another commenter suggested that the regulation also should recognize the doctrine of joint employer status, as that doctrine has been developed under the NLRA. A commenter suggested that the National Mediation Board should be recognized as the authority for determining whether companies covered by the Railway Labor Act (RLA) are separate. Another commenter stated that the rule on subsidiaries also should apply to operating divisions.

The intent of the regulatory provision relating to independent contractors and subsidiaries is not to create a special definition of these terms for WARN purposes; the definition is intended only to summarize existing law that has developed under State Corporations laws and such statutes as the NLRA, the Fair Labor Standards Act (FLSA) and the Employee Retirement Income Security Act (ERISA). The Department does not believe that there is any reason to attempt to create new law in this area especially for WARN purposes when relevant concepts of State and federal law adequately cover the issue. Thus, no change has been made in the definition. Similarly, the regulation is not intended to foreclose any application of existing law or to identify the source of legal authority for making determinations of whether related entities are separate. To the extent that existing law recognizes the joint employer doctrine or the special situation of the garment industry, nothing in the regulation prevents application of that law. Nor does the regulation preclude recognition of the National Mediation Board as an authoritative decision maker for entities covered under the RLA. Neither does the regulation preclude treatment of operating divisions as separate entities if such divisions could be so defined under existing law.

A commenter suggested that the regulations be clarified to reflect that if a business loses a contract, it is not responsible for employment losses that occur if the successor contractor fails. DOL agrees with the comment, but believes that the proposition state is axiomatic in the WARN scheme; an employer is only responsible for giving notice to its employees for covered employment losses that occur as a result of its actions. The Department does not believe that any clarification of the regulations is needed.

A question has been raised whether temporary employees are to be counted when determining whether an employer is covered under WARN. The Department notes that there is no exception for temporary employees (or more accurately, for employees working on temporary projects or in temporary facilities) in the definition of employer in the law; the only category of workers not counted in determining coverage is part-time employees, as defined in the statute. In determining employer coverage, therefore, temporary employees are counted unless they are part-time employees. Of course, while an employer may be covered by virtue of employing a sufficient number of temporary—but not part-time—workers, the employer may be exempt from any requirement to give these employees notice if they are working in a temporary facility, or on a temporary project or undertaking, as defined in § 4(a) of the Act and § 639.5(c) of these regulations.

The Federal Home Loan Bank Board (FHLBB) specifically commented on the application of WARN to its activities and those of the Federal Savings and Loan Insurance Corporation (FSLIC) in the current savings and loan (S & L) banking crisis. FHLBB argues that, because of its statutory mandate, it should not be considered an employer when it or the FSLIC closes a bank. The Department agrees that under the statutory scheme of the deposit insurance laws, neither the Board nor the FSLIC, which are exercising strictly governmental authority in ordering the closing, are to be considered as employers.

Another commenter suggested that "fiduciaries" in bankruptcy proceedings should be excluded from the definition of employer. Since adequate protections for fiduciaries are available through the bankruptcy courts, the Department does not think it appropriate to change the regulations to address this situation. Further, DOL agrees that a fiduciary whose sole function in the bankruptcy process is to liquidate a failed business for the benefit of creditors does not succeed to the notice obligations of the former employer because the fiduciary is not operating a "business enterprise" in the normal commercial sense. In other situations, where the fiduciary may continue to operate the business for the benefit of creditors, the fiduciary would succeed to the WARN obligations of the employer precisely because the fiduciary continues the business in operation.

(b) Section 639.3(b) Definition of "Plant Closing"

This section closely replicates the statutory definition of the term "plant closing" and applies the definition to other WARN requirements. There were few comments on the regulatory language itself, and they supported the approach taken.

A comment made in the preamble to the proposed regulation, suggesting that a plant closing occurs only where the threshold number of workers are terminated or laid off as a direct result of one or more plant closings, did, however, draw considerable comment. A number of commenters supported this interpretation. Several commenters opposed it, pointing to the structure of the statutory language. DOL has revisited this issue and has decided to revise its earlier position. Section 2(a)(2) of WARN defines plant closing as "the permanent or temporary shutdown of * * * one or more facilities or operating units * * * if the shutdown results in an employment loss during any 30-day period for 50 or more employees * * *." This language, particularly the use of the words "results in", contemplates that both employment losses of the employees who work in the facility(s) or operating unit(s) and those who lose their jobs as the direct result of the shutdown(s) are to be counted in determining when a plant closing has occurred. Thus, for example, if the 45 worker computer data entry department at a plant is closed

and, *as a direct result of that closing,* (and within 30 days of the closing), 5 computer programmers also are terminated, a covered plant closing has occurred.

Another commenter suggested that a series of closings or layoffs should be considered a plant closing or mass layoff "only if each stems from the same business decision, personnel action, or other distinct cause"; where no distinct cause accounts for a threshold number of employment losses there is no WARN coverage. DOL disagrees with this interpretation. WARN Section 2(a)(2) and (3) say nothing about cause. Under the language of those provisions, one merely counts up all the employment losses that occur in a 30-day period to determine coverage.

(c) Section 639.3(c) Definition of "Mass Layoff"

This section closely follows the statutory language defining the term "mass layoff" and contrasts plant closings and mass layoffs. In reviewing the language of the regulation, DOL has determined that the insertion of the phrase "which can be triggered by the termination of a smaller number of workers than a mass layoff" in the description of a plant closing, is technically incorrect, and, therefore, that phrase has been removed. Both mass layoffs and plant closings can be triggered by the layoff or termination of 50 workers. In the case of a mass layoff of less than 500 workers, however, coverage only will be triggered if the number of workers terminated is equal to 33 percent of the total number of workers at the single site of employment. Thus, the termination of 50 affected workers does not automatically lead to coverage as it does in the case of a plant closing.

One commenter noted that the legislative history of WARN makes it clear that only employees who are actively working for the employer at the single site of employment as of the time of the layoff are to be considered in determining whether the one-third threshold is met. Remarks to this effect were made by Sen. Metzenbaum, the Senate floor manager of the bill. (133 CONG. REC. S9488 (daily ed. July 9, 1987) (remarks of Sen. Metzenbaum)). Since the statutory language can be read to include only active employees and since no contrary interpretation has been discovered, the regulation has been revised accordingly. The Department believes that "actively working" employees refers to those currently on the payroll and in pay status as of the time of the mass layoff.

Another commenter suggested that the phrase "or the entire site" be added at the end of the third sentence of the section. The Department agrees that this change more closely conforms to the statutory language and has added the phrase.

A commenter suggested that the regulations should make it clear that part-time workers are not counted in determining mass layoff or plant closing thresholds. While this is a correct statement, the regulations adequately address the issue. For reasons already discussed, language has been added in the final regulations to clarify that workers on temporary projects or in temporary facilities who do not meet the definition of part-time workers are counted for purposes of determining whether covered plant closing or mass layoff coverage thresholds have been met.

(d) Section 639.3(d) Definition of "Representative"

This section quotes the definition of the term representative as it appears in section 2(a)(4) of WARN. The comments supported this use of the definition and no change has been made in the final regulations.

(e) Section 639.3(e) Definition of "Affected employees"

This section quotes the statutory definition of the term "affected employees": "employees who may reasonably be expected to experience an employment loss as a consequence of a proposed plant closing or mass layoff"; and discusses specific applications of the term to certain classes of employees, including "bumpees", managerial and supervisory employees and employees of independent contractors. It also indicates a rule for determining the number of affected employees for purposes of determining coverage thresholds.

The purpose of WARN, to provide notice to workers so alternative employment or necessary training can be obtained on a timely basis, applies to white-collar and managerial employees as well as to employees in the skilled trades and other blue-collar occupations. Therefore, the Department includes managerial and supervisory workers as "affected employees".

This provision drew a number of comments. A substantial number of commenters opposed any requirement of notice to "bumpees", that is, to workers who lose their jobs as a result of the exercise by an employee whose position has been eliminated (or by other more senior workers who have previously been bumped) of seniority or bumping rights established by a seniority system. Most of these commenters pointed out the complexity of many seniority systems and the difficulty of accurately predicting 60 days in advance which workers will actually lose their jobs. It was also pointed out that requiring notice to bumpees could lead to overbroad notice, which Congress clearly condemned. These commenters suggested that notice to incumbents in the positions to be eliminated satisfies the Act (although one of these commenters also suggested that it is extremely difficult to identify incumbents 60 days in advance). Some commenters suggested alternative notice to bumpees; either general notice to all potentially affected workers, some kind of different notice to bumpees, or specific notice to bumpees as soon as they are identified.

One commenter supported notice to bumpees but opposed any requirement that notice to bumpees be given only "to the extent that such workers can be identified at the time notice is required to be given." The commenter argued that section 3(b)(3) of WARN requires employers to give affected employees "as much notice as practicable".

Most of the comments discuss collectively bargained seniority systems under which the identification problems suggested in the comments will not arise since employers are required only to notify the affected unions and to provide them with information about the positions affected and the incumbents in those positions, not about the ultimate "bumpees". More fundamentally, the commenters' position on this issue, as it may apply to non-bargained seniority systems, directly conflicts with the plain language of WARN. Section 2(a)(5) of the Act defines "affected employees" (in non-union situations, the persons entitled to WARN notice) as "employees who *may reasonably be expected* to experience an employment loss". The plain meaning of this language is that notice must be given to those workers who will actually lose their jobs, to the extent they can reasonably be identified. Only if the workers who will lose their jobs cannot be reasonably identified is notice to incumbents sufficient.

DOL recognizes that, in cases of non-bargained, employer-developed seniority or bumping systems, there are real complexities which militate against imposing an absolute requirement that notice be given to all potentially affected employees. DOL is persuaded that there are factors, including the difficulty of predicting a bumping path

where employees have several options among positions or lines of progression into which they can bump, which make it difficult to predict who will finally be affected as a result of a plant closing or mass layoff. Nonetheless, DOL is constrained by the statutory language to provide for notice to bumpees. The final regulations provide some flexibility by providing that notice need only be given to individual workers who can reasonably be identified at the time notice is required to be given. This section and § 639.6(b) have been revised to clarify these principles.

In addition, the Department recommends that notice be given to bumpees who are not given the full 60 days' notice as soon as they are identified. Such notice, while not required, would tend to show good faith compliance. The Department does not agree that section 3(b)(3) of WARN provides authority for a separate requirement that notice be given to bumpees as soon as they are identified since that provision applies only to situations in which one of the three bases for providing less than 60 days' notice is invoked.

To some extent, it is true that broad notice may be the prudent course in cases where complex seniority systems exist, but the concerns raised by some commenters on this score appear to be overstated. Notice is not required to be given to intermediate bumpees in situations in which multiple bumps will occur. If an employee who has available bumping or seniority rights refuses to exercise those rights and quits or resigns instead, that employee has voluntarily quit, has not suffered an employment loss and is not entitled to notice. Therefore, an employer need only provide notice to two classes of workers: to those workers who are likely to actually lose their jobs taking into consideration the probability that bumping rights will be exercised, and to incumbents in the positions to be eliminated, in cases where it is not possible 60 days in advance of the covered event to identify the ultimate bumpees. Although the complexities of identifying these ultimate bumpees may still exist, the group of workers to whom notice must be given is considerably smaller than some commenters appear to think.

A commenter suggested that the regulations should be clear that the number by which to measure whether the plant closing or mass layoff threshold has been met is the number of employment losses that actually occur, if that number is less than the number of positions eliminated. While the Department agrees that this statement is correct and has revised the language of this section to reflect this interpretation, it is important to point out that, from a practical point of view, the number on which an employer must focus, in determining whether to give notice, is the number of potential employment losses which can be determined 65 days [1] before the closing or layoff is to occur, the time at which the decision to give notice must be made. As the same commenter stressed repeatedly in other comments, it is often difficult to predict 65 days in advance exactly how many employment losses will actually occur. Thus, an employer faced with a decision about whether to give notice may be well advised to base its decision on the number of positions to be eliminated, which is a known fact at the relevant time.

Commenters raised the question whether notice extends to bumpees who may be bumped at other employment sites (to the extent that they can be identified when notice is required to be given). DOL interprets the definition of affected employees to include such workers, who are, therefore, entitled to receive notice. It should be noted, however, that workers who suffer an employment loss at another single site of employment are not counted in determining whether plant closing or mass layoff coverage thresholds are met. (DOL notes again the caution that the employer must evaluate the facts as they appear when it must make its decision to give notice.) Thus, if an employer closes an operating unit which employs 55 workers and, because of crossplant bumping rights, 6 workers at another site lose their jobs, (and if these facts can be accurately predicted 65 days in advance of the closing date) the plant closing threshold has not been met at the first site. It is also possible that an employment action that affects large numbers of workers may trigger a second covered action at a separate site if enough workers lose their jobs through cross-plant bumping.

A commenter suggested that "the regulations should specify that consultant or contract employees employed by another employer or self-employed are not counted toward the threshold for determining employer coverage." DOL agrees with this proposition, as long as the separate employment relationship is established under existing legal rules. It is specifically covered in section 639.3(e).

[1] The figure of 65 days is used as an approximation of the number of days it will take to identify workers and to prepare and serve notices 60 days in advance of a planned action.

(f) Section 639.3(f) Definition of "Employment Loss"

This section defines "employment loss" and exclusions from employment loss when certain transfers occur. These definitions closely follow the language of the statute. The proposed regulation provided that workers who retained "full employment status" could be reassigned without suffering employment loss. The Department notes that it interprets the statutory terms "termination" and "layoff" in section 3(a)(6) to be distinguishable and to have their common sense meanings. Thus, for the purposes of defining "employment loss", the term "termination" means the permanent cessation of the employment relationship and the term "layoff" means the temporary cessation of that relationship.

A number of commenters questioned the use of the term "full employment status" in section 639.3(f)(2). They argued that this concept, if broadly applied to mean that an employee can be reassigned only if he/she retains full pay and benefits, is inconsistent with the statutory definition of employment loss and with employers' rights to reassign workers.

The intent of the "full employment status" language was to deal with a specific comment from a major employer which has a program for moving workers who are to be terminated or laid off for a long time into job-finding or retraining activities, all at full pay and benefits. The "full employment status" language was an attempt to distinguish this kind of program, in which an employee is not working at his old job but is retained on the payroll, and does not experience an employment loss, from other kinds of severance pay or supplemental unemployment benefits (SUB) programs which occur after the end of the job and do not postpone the date of the employment loss. DOL recognizes that the comments have merit and that the "full employment status" concept is capable of overbroad application. The regulations have been revised to delete the concept but to retain language encouraging the kinds of employer-sponsored retraining programs for which the full employment status concept was developed.

It must be noted that the ability to reassign workers is not without limits. An employer may not vary the terms of a worker's assignment so much as to constructively discharge (as discussed in greater detail below) the employee. Language to this effect has been added to the regulation.

The question also has been raised as to whether an employment loss occurs if an employee retains full pay and benefits and other entitlements but is not required to report to work. DOL notes that neither WARN nor the regulations dictate the nature of work to be performed—or whether work must be performed—during a period of employment after notice of an impending plant closing or mass layoff has been given. However, WARN does not replace or alter any other contractual or statutory rights and remedies of employees, and other contracts or statutes may be applicable when employers consider reassignments or assignment to non-work status after giving notice in advance of plant closings or mass layoffs.

Several commenters requested further definition of what constitutes a "voluntary departure, or retirement", which are excluded from the definition of employment loss. One commenter suggested that "incentive programs" should be specifically recognized as voluntary departures. Another commenter suggested that employees who are offered transfers to another employment site and who refuse those offers should be considered to have voluntarily quit. Other commenters suggested that "voluntary layoffs", that is, layoffs provided for in certain collective bargaining agreements under which more senior workers may accept a layoff in return for certain SUB or other benefits should be excluded from the definition of employment loss. Other commenters disagreed and suggested that workers who retire or quit in the face of an impending termination should not be treated as having voluntarily departed.

DOL agrees with the commenters that some clarification of the concept of voluntary departures is appropriate. The concept is not a new one in the law; there is a developed body of law under such statutes as the NLRA, Title VII of the 1964 Civil Rights Act and the Age Discrimination in Employment Act. This body of law recognizes the concept of constructive discharge, under which a worker's resignation or retirement may be found not to be voluntary if the employer has created a hostile or intolerable work environment or has applied other forms of pressure or coercion which forced the employee to quit or resign. Similarly, acceptance of incentive programs, particularly incentive retirement programs, can be found to be involuntary where a worker was unduly pressured to accept the program. The regulations have been revised to include this concept. Since the law in this area is well developed, the regulations do not attempt to specifically define the parameters of voluntariness, but merely refer to the existing legal concepts.

In terms of the specific issues raised in the comments, the Department agrees that incentive programs, including incentive retirement programs and voluntary layoffs, that meet the definition of voluntariness outlined above, are voluntary departures for purposes of WARN. DOL does not, however, agree that a worker who, after the announcement of a plant closing or mass layoff, decides to leave early has necessarily been constructively discharged or quit "involuntarily". (In the situation posted, where the plant closing or mass layoff has been announced, and, presumably, notice has been given, the worker already has received the notice that WARN requires and whether his later resignation or retirement is voluntary or not is no longer germane.)

The comment about workers who quit when offered a transfer involves another provision of WARN (section 2(b)(2)) which defines exclusions from employment loss. Under that section, which will be discussed in greater detail below, the basic rule is that if, as a part of a relocation or consolidation of all or part of an employer's business, a worker is offered a transfer within a reasonable commuting distance, the worker is not considered to have suffered an employment loss whether or not the worker declines the transfer. There is no requirement for acceptance of the offer in this situation and, unless the offer itself may be deemed to be a constructive discharge, the offer of the transfer itself means that the worker is not deemed to suffer an employment loss. On the other hand, if the transfer is beyond a reasonable commuting distance, WARN requires that the employee accept the transfer and refusal to accept means that the employee has suffered an employment loss. If the transfer is not covered under these provisions, because not offered as a result of a relocation or consolidation, a technical employment loss occurs. If an employer offers to transfer a worker in this situation and if the worker accepts, the employer may still wish to provide notice as additional protection from liability.

Several commenters suggested that the regulations incorporate a concept of "net employment loss" to cover situations in which an employer lays off one group of workers and simultaneously hires another group to work on a different aspect of the same task or project. Other commenters suggested that the definition of employment loss exclude government service contractors; since when such employers lose their contracts, their employees ordinarily are hired by the successor contractor. Similarly, a commenter suggested that where work is contracted out and the contractor hires the former employer's old workers to perform the contracted work, no notice should be required unless more than the threshold number of employees are not rehired. These definitions cannot be squared with the definition of employment loss or with the statutory structure, which focuses on the effects of employment losses on groups of workers. WARN requires notice to workers who lose their jobs with a particular employer, whether or not other workers have gained other jobs and whether or not other employers may hire those workers.

As noted above, § 639.3(f)(4) reiterates the statutory exclusion of certain transfers from the definition of employment loss. Commenters suggested that further definition of the terms "relocation" and "consolidation" are needed. One commenter suggested that the definition should be consistent with the definition under the NLRA; which it summarized as stating that the terms should be given a broad meaning not dependent on labels, as long as the transfer offer is bona fide and is to a related enterprise. While the Department agrees that a broad definition of the terms is appropriate in light of the intent of WARN to focus on actual losses of employment, the commenter's proposal cannot be accepted since it would give no meaning to the words "relocation or consolidation". The final regulations have been revised to include a broad definition, suggested by another commenter, under which the transfer of definable business, whether customer orders, product lines or operations, to a different site will be considered a relocation or consolidation.

Commenters questioned how to determine whether there has been a more than 50% reduction in hours for purposes of the third branch of the definition of employment loss. They asked whether overtime hours should be counted; whether overtime should be calculated on the basis of an 8-hour day or a 40-hour week; and how to determine the base for employees with fluctuating hours. The Department thinks that overtime hours or hours in addition to the normal and customary hours of the worker should not be counted in determining the base hours of

work. In terms of the other questions, DOL will rely on the definitions found in the FLSA, that overtime is calculated based on a 40-hour week and that each week is treated separately. For an employee who works fluctuating hours, the monthly base would be the sum of the non-overtime hours worked in each week of the month.

A commenter questioned whether employees laid off for an indefinite period (i.e., where the employer expects to recall them but does not know whether their recall will occur before or after 6 months) are automatically to be considered as experiencing an employment loss at the time of the layoff. In this situation, the layoff is not automatically deemed an employment loss. If the layoff lasted for more than 6 months, the workers would experience an employment loss, would be counted toward the trigger level for the plant closing or mass layoff of which their individual layoffs were a part, and would have been entitled to notice if the layoff or closing met coverage thresholds. Since an employment loss begins with the layoff and since notice is due 60 days in advance, a prudent employer wishing to avoid potential liability would provide notice to the workers at least 60 days prior to their layoff unless it is certain that the layoff will not exceed 6 months.

A commenter asked how to define the date on which to measure the 6-month period to determine whether there has been a more than 50% reduction in hours of work. The commenter suggests using a "snapshot" on the date notice first should be given. While DOL agrees that the determination whether a reduction in hours will take place must be made around the time notice must be given, the use of the term "snapshot" is confusing since it implies looking at events that have already occurred. Notice that is given based on what has happened over the past 6 months may be too late.

The reduction in hours language of the definition of employment loss is not explained in the legislative history. This language can be interpreted to require either that notice be given 60 days before the beginning of the 6-month period in which hours are to be reduced more than 50% or that notice be given 60 days before an employee will suffer 6 consecutive months of more than 50% reduction in hours (that is, 60 days before the end of the 6-month period.) There are practical reasons for favoring each interpretation. The former interpretation better protects workers against a substantial loss of income. The latter interpretation is more consistent with what is probably the more common situation, in which substantial reductions in hours occur, where the reductions are not planned 6 months in advance, but happen incrementally because of changing conditions, for example, a reduction in cash flow that extends for many months. Thus, DOL beclieves that a common sense rule should be followed in determining when to give notice of a covered reduction in hours: When it becomes evident that the reduction will extend beyond 6 months, WARN notice should be given. This rule will, at least, establish the employer's good faith effort to comply with WARN. (Of course, if the employer knows in advance that a reduction in hours of more than 50% will occur for each of 6 months, the rule requires that the employer give notice at least 60 days in advance of the beginning of the period or as soon as the duration of the reduction becomes clear.)

Another commenter suggested that the regulations should be clarified to state whether a layoff, recall and layoff of a worker within a 30-day period constitutes one or two employment losses. Since WARN defines employment loss as a layoff exceeding 6 months in duration, a layoff and recall which occurred within a 30-day period cannot be an employment loss. Thus, only the second layoff may count, if it will be of sufficient duration.

(g) Section 639.3(g) Definition of "Unit of Local Government

"Unit of local government" is defined in the proposed regulations as in the Act. This section also provides a rule, based on total taxes paid to each unit, for determining which unit of local government to notify where a plant is located within more than one unit of local government. A commenter pointed out that some taxes are not paid directly to the local government but are paid as a surcharge on a State tax and are collected by the State. The commenter suggested that the employer may not be able to easily determine how much tax it paid to a unit of local government. The Department agrees and has revised the definition to include only taxes paid directly to the unit of local government.

(h) Section 639.3(h) Definition of "Part-Time Employee"

The definition of "part-time employee" in the proposed regulations follows the statutory language. Some commenters were unsure whether regular full-time employees with employment during less than 6 of the last 12 months would be considered part-time or full-time employees. The statute defines such employees as part-time.

Other commenters were unsure as to the status of employees who are traditionally understood to be "seasonal" and short-term, yet are hired on a recurring basis. According to the Act, if there employees worked for less than 6 of the past 12 months, they are part-time employees. Such employees would, in many cases, also fall under the "temporary facility/limited employment" exemption in section 4(a). Further, "seasonal" employees who work 6 months or more may also fall under the "limited employment" exemption.

In response to commenters' requests for guidelines in determining the period used in calculating whether a worker has worked "an average of fewer than 20 hours per week," DOL has established that the shorter of the time the worker has been employed or the most recent 90 days should be used.

(i) Section 639.3(i) Definition of "Single Site of Employment"

This section provides a definition of "single site of employment" which is drawn from the April 1988 Conference Report on H.R. 3. (H.R. Rep. 100-576, 100th Cong., 2nd Sess., 1046 (April 20, 1988)). As a general rule, a geographic connection or proximity is required to define "single site of employment." Even where several distinct operations are performed at a geographically connected site, that building or complex will be counted as a single site of employment. The regulations also recognize that, in some limited cases, geographically separate sites may still be considered a single site of employment because of an inextricable operational connection. DOL intends this exception to be a narrow one to cover those cases where separate buildings are used for the same purpose and share the same staff and equipment.

Several commenters expressed concerns that the definition of single site of employment could be read either too broadly or too narrowly. Two commenters were concerned that the discussion of geographically separate but operationally connected sites in § 639.3(i)(2) could be read broadly to cover separate sites which occasionally

share staff or which are supplied from a common source. As noted above, this exception is intended to be read narrowly to cover those rare situations in which two separate buildings share staff, equipment and functions. DOL believes that the language of the exception conveys this narrow reading.

A commenter urged that the definition be amended to treat geographically contiguous facilities that are functionally separate as distinct sites. The Department agrees that this is an appropriate distinction in those cases where two plants are clearly separate, that is, where they produce distinct products, have different workforces and have separate management at the plant level. This reading does not appear to be inconsistent with Congress' concern, reflected in the Conference Report, that geographically separate plants be considered different single sites of employment. The language of the regulation has been revised to reflect this exception. Again, this is intended to be a narrow exception to the general rule that geographically related facilities are single sites of employment and geographically separate facilities are separate sites.

The comments just discussed also caused the Department to review the language of the regulation and to add a new subparagraph to make it clear that in office buildings or similar sites, where several different businesses rent or own space, the single site of employment for each employer is the space within the building that it rents or owns.

Several commenters focused on the "catchall clause" in § 639.3(i)(4). Some commenters suggested that the clause either be clarified or deleted to prevent it becoming an escape clause. Two commenters described their individual employment arrangements and suggested that the clause should be interpreted to include them. These employers have cross-plant bumping and worker transfer among a number of geographically separate facilities over a large area, in one case a major metropolitan area, in another a several hundred square mile area. Given the concern expressed in the Conference Report on H.R. 3 that geographically separate facilities be treated separately, neither of these situations is an appropriate exception to the rule which Congress intended to apply, that individual plants should be treated individually. (H.R. Rep, 100–576, 100th Cong., 2nd Sess., 1046 (April 20, 1988)). DOL continues to believe it prudent, however, to maintain some flexibility in the definition of "single site of employment", to provide for truly unusual organizational situations which DOL could not anticipate. The clause in § 693.3(i)(4) has been retained in the final regulations, with the proviso that application of any alternative, situation-specific definition is allowable only if its use is not intended to evade the purpose of WARN to provide notice. Thus, a firm which has a factory or other site which would otherwise qualify as a single site of employment and whose size would permit treatment of some small layoffs as mass layoffs (i.e., a plant that employs fewer than 1499 workers) cannot be combined with other sites within an area for the purpose of eliminating WARN coverage of mass layoffs.

A commenter suggested that foreign sites of employment should not be covered under WARN. DOL agrees that the general rule is that foreign sites are not considered covered by a statute unless coverage is specified in the language of the act, and have added an exclusion for foreign sites of employment to the definition of single site of employment. The exclusion of foreign sites does not exclude the U.S. workers at those foreign sites from being counted to determine coverage as an employer, i.e., whether an employer has 100 employees.

(j) Section 639.3(j) Definition of "Facility or Operating Unit"

The regulations adopt common sense definitions of the terms "facility" and "operating unit" within a single site of employment. These terms are important for determining whether a plant closing has occurred. DOL has defined these terms in a manner which attempts to define physically and operationally distinct entities for purposes of determining whether a plant closing, the shutdown of a distinct entity, has occurred.

Several commenters were concerned that the definition of "operating unit" was overly broad and suggested that it be made clear that the term refers to only a "fundamental, distinct or structural organizational segment of the enterprise". These commenters were critically of the use of the word "task" within the definition, arguing that the term is capable of application to activities that are neither fundamental nor distinct. Another commenter thought the definition was too narrow and should be revised to include any distinct operation, department or division of work at a worksite, defined in terms of function or organization. While these two commenters are apparently seeking different results in terms of how operating units would be defined in practice, there appears to be little difference in the definitions they present and DOL agrees with both commenters that only distinct structural or operational entities within a single site of employment are intended to be included as operating units. DOL agrees that the use of the word "task" might be construed to include specific work assignments within a distinct unit that would not be appropriately included as an operating unit. The final regulations do not use the term "fundamental" in the definition simply because it might create more ambiguities in applying the definition that it would avoid. The definition of operating unit has, therefore, been revised to include these concepts. The revised definition reads: "an organizationally or operationally distinct product, operation or specific work function".

Two examples may help to clarify our view of the appropriate limits of the definition. If an automobile manufacturing plant has an assembly line which assembles cars, there may be groups of workers whose job is to put on the doors or the bumpers. The operating unit should be the assembly line, not the groups of workers who perform the task of door or bumper assembly. Similarly, a data processing department may have within it data entry workers, computer programmers, computer maintenance workers and clerical workers. If the department is clearly a distinct entity in terms of the employer's organizational structure, the data processing department is the appropriate operating unit and the separate task groups are simply a part of that operating unit. (These examples are merely illustrative and are not intended to create rules applicable to all assembly lines or data processing departments. There may well be cases in which workers performing different jobs as a part of a larger operation may be sufficiently organizationally or operationally distinct to be defined as a separate operating unit.)

The critical factor in determining what constitutes an operating unit will be the organizational or operational structure of the single site of employment. Sources of evidence which will assist in defining separate and distinct units will be applicable collective bargaining agreements, the employer's organizational structure and industry understandings of what constitute distinct work functions. One commenter suggested that in the trucking industry, lines of progression would constitute operating units, i.e., over-the-road drivers, mechanics and clericals would each be in separate operating units. As the Department understands the

comment, the use of lines of progression may well be an appropriate basis for defining operating units in the trucking industry. In other industries, however, seniority lines or lines of progression may not be a useful basis for defining an operating unit. Several different groups of workers in different lines of progression may be organized into a recognized department, like the data processing department discussed above, which would be an operating unit.

In the preamble to the proposed regulations the following example was used to illustrate the operating unit definition: "a 24-hour store eliminating its night shift would not carry out a closing of an operating unit, but the elimination of all warehouse and stock workers on all three shifts would constitute the closing of an operating unit if 50 or more workers were affected". Several commenters disagreed with the example. Some suggested that shifts could constitute operating units depending on the employer's organizational structure and whether the elimination of the shift "results in the closing of the facility during the time the workforce was previously employed". It is possible that there may be situations in which shifts can be operating units if the workers on the shift perform some separate and distinct function from the workers on other shifts. If, for example, a shift performed only maintenance functions which were not performed on other shifts, if the workers on that shift were in a separate job classification and, possibly, if the workers were recognized in the employer's organizational structure or in applicable collective bargaining agreements as a separate department, the shift could be an operating unit. The Department disagrees, however, that the mere closing of a plant for hours when it was previously open constitutes the closing of an operating unit. As long as the plant continues to operate and no recognized department, operation or major work function has been terminated, the fact of a reduction in hours of plant operation is not the closing of an operating unit.

Other commenters disagreed that all warehouse and stock workers would necessarily constitute an operating unit. They suggested that whether such workers would be defined as an operating unit would depend on the employer's organization. If the store were organized by product departments, the departments would be the operating units and the stock workers would be assigned to those units. DOL agrees that, in the situation posited, the product departments are the operating units.

Another commenter suggested that the definition of operating unit should exclude "common tasks" such as maintenance, secretarial or housekeeping. Whether maintenance, clerical or housekeeping workers will be considered as an operating unit will depend on how they are organized and how they operate. If there is a separate maintenance or housekeeping department or a central clerical pool, the workers in those units will be in separate operating units. If the workers are assigned to other distinct departments, for example, if different clerical workers work exclusively in several distinct departments, the workers will be considered assigned to those departments.

Another commenter suggested that the definition of operating unit is too broad and proposed that operating units should be defined only as including production processes and should not include support staff. The Department disagrees. The reason for the use of the term "operating unit" in WARN is to apply the protections of the law to small units of workers in a larger plant when their units are closed. It is not relevant to this purpose whether the workers are production workers or support workers; their job loss and their need for protection is as real in either case.

A commenter suggested that the definition of operating unit be clarified to reflect that, in the construction industry, employees of a subcontractor on the construction site where several different activities are taking place are an operating unit. DOL agrees that this will often be the case if the workers are performing a separate part of the work. However, this would not necessarily always be the case. Consistent with the decision not to attempt to cover industry-specific cases in the regulations, these final regulations have not been revised to provide for this particular case.

Another commenter suggested that in the railroad industry certain maintenance crews have no home base and should be treated as separate operating units. While such workers may well be considered as a separate operating unit, their status must be determined in terms of the single site of employment to which they are assigned. These workers may not have an assigned home base, but they must get their orders or assignments from somewhere, even if that place changes from time to time. In order to cover this situation and the situation of outstationed workers and traveling workers who report to but do not work out of a particular office, that part of the regulation relating to mobile workers has been revised to clarify that such workers should be treated as assigned to their home base or to the single site from which their work is assigned or to which they report. This part of the definition has been moved, for reasons of organizational clarity, to be a part of the definition of "single site of employment" in § 639.3(i).

(k) Section 639.3(k) Definition of "State Dislocated Worker Unit"

The definition of the term "State dislocated worker unit" refers to the statutory provisions under which such units are created. None of the comments discussed this definition and it remains unchanged.

(l) Section 639.3(l) Definition of "State"

The definition of State refers to the 50 States, the District of Columbia, the Commonwealth of Puerto Rico and the U.S. Virgin Islands. None of the comments discussed this definition and it remains unchanged.

(5) Section 639.4 Who Must Give Notice

The prefatory language in § 639.4 states the basic rule of WARN about giving notice to the appropriate parties. None of the comments discussed this definition and it remains unchanged.

(a) Section 639.4(a) Who Should Give Notice

This section discusses who, within the employer's organization, should give notice. None of the comments discussed this definition and it remains unchanged.

(b) Section 639.4(b) Layoffs That Extend Beyond 6 Months

This section discusses an employer's responsibility in situations in which a covered layoff, which originally was announced as being for 6 months or less in duration, is extended beyond 6 months and, therefore, falls within the definition of "employment loss" in section 2(a)(6) of WARN and triggers the requirement of notice. One commenter proposed that any suggestion in the regulations that employers indicate the length of layoffs be deleted since some courts might interpret it as a requirement. Another commenter suggested that there should be no requirement of written notice for layoffs of 6 months or less. Another commenter objected to the inclusion of the phrase "consistent with section 3(c) of WARN" and suggested that the requirements of that section be spelled out.

In response to these comments and the Department's own review of the statute and the regulations, language has been added to the final regulations in an effort to provide better guidance to employers. The Department's view is that an employer who announced at the outset that a layoff would be for 6 months or less, who did not provide advance notice under WARN and who plans to extend the layoff beyond 6 months may violate the Act unless: (i) The extension is due to business circumstances (including unforeseeable changes in price or cost) not reasonably foreseeable at the time of the initial layoff; and (ii) notice is given when it becomes reasonably foreseeable that the extension is required. A layoff extending beyond 6 months for any other reason is treated as an employment loss from the date of its commencement. Although the standard for foreseeability under this provision may be seen as less exacting than it is under the "unforeseeable business circumstances" exception of section 3(b)(2)(A) of WARN, due to the addition of the parenthetical phrase in section 3(c), there still may be situations in which an employer may be found in violation of WARN when it gives notice that a layoff will extend beyond 6 months. For example, if an employer shuts down for 5 months to retool his plant for a new product line and the retooling process takes longer than originally anticipated, *and the employer has experienced similar delays in previous retoolings*, the employer may be liable under WARN for having failed to give notice 60 days before the shutdown was begun since the cause of the extension arguably was foreseeable. An employer may, therefore, want to consider giving notice at least 60 days prior to the layoff unless it is certain that the layoff will not exceed six months.

The Department does not view the regulations as requiring any form of notice of a layoff that will not extend for more than 6 months. The statutory use of the term "announced" merely recognizes the reality that if an employer closes down or lays off some workers for a short period of time and expects to reopen or recall the workers, it will somehow communicate to the workers the fact that the closing or layoff is temporary.

(c) Section 693.3(c) Sales of Businesses

WARN creates an absolute division of responsibility for giving notice between a buyer and a seller of a business; the seller is liable to give notice of covered actions which occur up to and including the date (time) of sale and the buyer is responsible thereafter. Thus, at all times one of the parties to the transaction is responsible for giving notice. The proposed regulations offered guidance to employers anticipating a sale or purchase transaction to avoid confusion regarding service of notice and liability under WARN, by suggesting that each party's responsibility with respect to these items be covered in the contract of sale.

There were a wide variety of comments on this provision. One commenter suggested that the regulations make it clear that if the employees of a business that has been sold are not rehired by the buyer, the responsibility for giving notice is on the seller. The Department believes that such an allocation of responsibility is precisely contrary to the statutory language and intent. If a plant closing occurred as a result of the buyer's decision not to rehire the seller's workers, and the closing occurred after the effective time of the sale, the buyer is responsible for giving notice. This view is consistent with the statutory provision that the employees of the seller become the employees of the buyer immediately after the sale, with the intent of WARN that notice be given to workers who will suffer dislocations and with the reality of allocating responsibility for notice to the party to the transaction that actually makes the decision to order the plant closing or mass layoff. Other commenters agreed with the allocation of notice responsibility just discussed; one suggested that the apportionment of liability turn solely on when the plant closing or mass layoff occurs relative to the effective date of the sale.

Some commenters suggested that the regulations be clarified to assign responsibility to the seller through the date of sale and to the buyer on the next day. Such an interpretation is a possible reading of the statutory language; but DOL has rejected that reading because it would either make the seller responsible for the acts of the buyer or it would create a period in which no one is responsible for giving notice. The former alternative is inconsistent with the legal position of the parties after the sale has become effective. The latter alternative is inconsistent with the intent of the statute.

A commenter suggested that the regulations make it clear that the seller is not responsible for a layoff ordered by the buyer within 60 days of the sale. For the reasons already discussed, DOL agrees that no such responsibility attaches.

Several commenters suggested that no employment loss is experienced in a sale situation if the seller's employees are hired by the buyer within 6 months of the sale. Assuming there has been an announcement that a layoff of 6 months or less has been ordered, this is a correct statement since the definition of employment loss excludes layoffs of 6 months or less.

Several commenters discussed the provision of WARN that assigns the seller's employees to the buyer after the sale. These commenters agreed that this provision does not create any additional employment rights, other than WARN notice rights and that, although a technical termination (i.e., the termination of employment with the seller) may be deemed to have occurred in a sale, that termination, by itself, is not a basis for WARN notice. One commenter suggested that nothing in the WARN provision on sales requires that a buyer actually hire the seller's employees. Another commenter suggested that it should be made clear that employees in a sale situation have the same WARN rights as do any other workers. The Department generally agrees with all these statements and believes the final regulations reflect them; but notes that the buyer is responsible for giving notice to workers if it does not hire them.

One commenter suggested that the regulation should focus on the closing date and time of the sale, not on the effective date and time. The Department does not view these terms as different and the final regulations continue to use the term "effective date" because it is used in the Act.

One commenter suggested that the phrase "at all times, one of the parties to the transaction is responsible for giving notice" be added to the regulations. DOL agrees and has added the phrase in the final regulations.

The variety of comments suggests that the regulations needed to be clarified, along the lines suggested in this discussion. This section has been revised extensively. The examples in § 639.4(c)(1)–(3) have been revised to make it clear that these are merely suggestions about how the buyer and seller may wish to handle notice responsibilities between themselves and do not change the basic allocation of responsibility for notice. While specific mention of the contract of sale has been deleted in the final regulations, since the parties to a transaction may utilize other methods to allocate WARN responsibility, DOL continues to suggest that prudent employers make provisions for WARN notice, if applicable, in the

contract of sale or elsewhere. The federal regulations also make it clear that if the seller gives notice as the buyer's agent, the responsibility for giving notice still remains with the buyer.

The FHLBB also described the situation in which it takes over an institution and keeps it operating while seeking to merge it with another bank or to find new owners. In that case, the new owner stands in the position of a buyer under WARN and is responsible for notice from the time the merger or acquisition becomes effective.

One commenter suggested that DOL not promulgate regulations on sales. DOL believes that such a course of action would be inconsistent with its statutory role and with its efforts to assist employers and workers in fully understanding their rights and obligations under a complex statute.

(6) Section 639.5 When Must Notice Be Given

(a) Section 639.5(a) General Rule

This section discusses the basic WARN rule that notice must be given 60 days in advance of a planned plant closing or mass layoff. It also discusses the 30- and 90-day aggregation periods found in sections 2(a) and 3(d) of WARN and suggests alternative rules for measuring the size of an employer's workforce for determining whether coverage thresholds are met.

Notice with respect to an individual worker's employment loss must be given 60 days in advance of that worker's separation from employment. In response to requests for clarification as to what date is the separation date, the Department has specified in § 639.5(a)(1) of the regulations that a worker's last day of employment is considered the date of that worker's layoff. The word "calendar" also has been added in this section to clarify that 60-day notice is not based on working days.

To aid employers in complying with the Act and issuing notice when it is due, DOL suggests that the employers look ahead and behind, not only 30 days, but 90 days (to determine whether coverage is triggered under section 3(d) of the Act) in determining whether planned employment actions will trigger notice requirements. By doing this, an employer can look at its planned employment actions in the broader framework of the Act, and reduce potential liability for failure to give notice when thresholds have been met. For example, if an employer has 300 employees, 60 of whom experience an employment loss on March 5 and an additional 40 of whom suffer an employment loss on March 30, sixty days' notice is required for both the March 5 and the March 30 employment losses, since they occurred within a 30-day period and constitute a mass layoff. If a third layoff affecting 60 employees occurs on April 20, these employees also are entitled to notice since their employment losses fall within a second 30-day period which includes the March 30 layoffs.

Section 3(d) of WARN provides that if, within a 90-day period, separate employment losses occur, each of which involves fewer than the number of workers necessary to trigger coverage but which together add up to the minimum numbers necessary to trigger coverage, WARN notice must be given unless the employer can demonstrate that the individual actions arose from separate and distinct causes. The Department recognizes that this provision may place employers in jeopardy for failing to accurately predict their employment actions. DOL is, however, constrained to interpret the provision according to its terms. It is important to note that the 90-day aggregation provision applies only to separate actions each of which is under the coverage threshold. Thus, small plant closings or layoffs are not aggregated with covered plant closings or mass layoffs. Also, as some commenters pointed out, it does appear that, in some cases where an employer underestimates the size of a layoff, the unforeseeable business circumstances exception for reduced notice may be applicable. Use of this exception may reduce liability for the second group of workers who are laid off, but it does not appear to provide much assistance as to the failure to give notice to the first group.

A number of commenters asked for additional definition of the term "separate and distinct actions and causes". One suggested that the definition be that the layoffs arise from different events. Another commenter suggested that, in the construction industry, the completion of one phase of a project and the layoff of the crafts workers on that phase should be considered as separate and distinct causes. The Department does not find either of these suggestions helpful; the first is too ambiguous to be useful; the second, while probably correct in the context of the construction and similar industries, does not provide a general definition. (In any event, since most construction workers will be engaged in work on temporary projects, the definition will be irrelevant to most layoffs in that industry.) DOL has considered these comments, but believes that the words of the statute are clear.

One commenter suggested that the regulations not include language that an employer should look ahead 90 days to determine whether separate but related events will trigger coverage. The commenter argues that this language is gratuitous and might undermine an employer's defense that the layoffs arose from separate and distinct causes. The Department believes that this language is an appropriate caution to employers about the obligations which WARN places upon them.

One commenter gave a specific example of a situation in which 90-day aggregation might apply and asked questions about the application of that provision. The commenter offered the following example:

Day 1—Company has 180 employees;

Day 2—Company terminates 30 employees (now 150 employees);

Day 31—Company terminates 29 employees (now 121 employees);

Day 60—Company terminates 6 employees (now 115 employees);

Day 90—Company terminates 5 employees (now 110 employees).

The commenter asked, to whom is the company liable? The commenter argued that there is liability only to the first 30 workers because the other three groups when aggregated do not constitute ⅓ of the number of employees on Day 31 and, therefore, the mass layoff threshold has not been met as to those workers. The commenter also asked what if the first group were "fired" for cause, poor productivity; is there a violation if there are no further layoffs?

In answer to these questions: Assuming that no notice was given, the company is liable to all 70 employees because the mass layoff threshold has been reached through separate actions which did not occur for separate and distinct causes within a 90-day period. All employees terminated within the 90-day period have suffered a mass layoff and all are entitled to 60 days' notice before the date of their termination. For this purpose, the date on which the company size is measured is Day 1. (Note that the aggregation periods are rolling and the second layoff starts a second 90-day period where the applicable workforce is 121 workers.) On the second question, if the workers were fired for cause they have not suffered an employment loss as defined in WARN section 2(a)(6)(A), which excludes discharges for cause. (The remaining 40 workers who suffered an employment loss are not numerous enough to trigger mass layoff coverage.) It is, however, likely that a mass firing

will be challenged and if it is determined that the firing was not for cause, the notice obligation will revive. The courts may well look at the question of whether the mass firing was intended to evade the Act.

The regulation also provides for a "snapshot" test for determining the number of employees in an employer's workforce or at a single site of employment for purposes of determining coverage. The "snapshot" test is simply to look at the employer's employment levels on the date notice is due to be given. An alternative test also is suggested for those unusual situations in which the results of the snapshot test are not representative. Under the alternative test, an employer or employees may look to a date or to a time period in which employment levels were more representative.

A number of commenters suggested that the alternative test be abandoned because it might create too many ambiguities and because it might lead to second guessing in many situations. DOL believes that there are situations in which the workforce at a single point in time may be genuinely unrepresentative and may lead to inappropriate coverage or lack of coverage, such as situations where workers are temporarily transferred among plants. Because there is a need to provide protection to both employers and workers in these cases, the final regulations retain the alternative test. In so doing, the final regulations have been revised to stress that the alternative test is intended to be used only in unusual situations. It is not to be applied in cases where a workforce has shrunk through ordinary attrition. Language has been added to the final regulations to make it clear that the alternative test is only to be used in unusual situations and is not to be invoked for the purpose of evading WARN.

Another commenter disagreed with both the snapshot and the alternative tests. The commenter argued that the employer's workforce should be determined before notice is due to be given. The commenter suggested a bright line test for determining coverage: an employer should be covered if, at any time before an employment loss, it had 100 or more workers. While, from a practical point of view the employer probably must look at its workforce on the date on which it must decide to give notice, the Department concludes that the use of the date on which notice is to be given is a reasonable date to use and is more easily applied than any alternative date. The commenter's suggested test poses serious problems because it does not permit legitimate shrinkage of the workforce due to attrition to be taken into account and since it does not apply to measuring the workforce at a single site of employment for purposes of determining whether mass layoff thresholds have been met.

Questions were raised with regard to whether temporary employees are to be counted when determining whether the closing/layoff threshold is reached. As stated earlier, there is no exception for counting temporary employees in the law or the regulations. Part-time employees, as defined in WARN, are the only workers that are not counted when making this threshold determination. Temporary employees, unless they are part-time, should, therefore, be included in the calculation.

Several commenters raised a related issue not covered in the regulations. They suggested that an exception for government ordered closings be included in the regulations. No language recognizing such an exception appears in WARN and the Department is reluctant to create such an exception. However, some government-ordered closings may constitute unforeseeable business circumstances to which reduced notice applies. This approach is supported in the legislative history. (133 CONG REC S9435 (daily ed. July 8, 1987) (remarks of Sen. Kennedy)). Although this treatment will lead to after the fact notice in some cases, it also will lead to the provision of some notice to workers affected by the closing. These workers have a legitimate need for notice, particularly for notice of whether the closing will be a permanent or temporary closing.

Some commenters discussed several types of governmental actions which they argued should be treated as government ordered closings. DOL agrees that those closings which are the direct result of governmental action and which occur without notice should be counted as government ordered closings to which after the fact notice is applicable. Examples of such closings would be the closing of a restaurant by a local health department or the closing of nuclear power plant by the Nuclear Regulatory Commission. Other agencies do not take such direct action. For example, the Occupational Safety and Health Administration and the Environmental Protection Agency take enforcement actions which might result in the closing of a plant by the employer either to remedy the violation or because it cannot continue to operate. These agencies do not, however, directly order the closing of the plant and they usually give some notice of the violation and an opportunity to contest the findings. Such closings, although they may result from a government action, are not government ordered and are not subject to the same treatment. (Depending on the length of the notice given, a claim that the closings qualify for reduced notice under the unforeseeable business circumstances exception may be available.) A commenter also suggested that terminations of government contracts should qualify as government ordered closings. In most cases, there is some notice of the government's intent to terminate a contract, even if the termination is for cause and, for the reasons stated above, these contract terminations should not be treated as government ordered closings.

The Department notes an important difference between the closings discussed above and the absolute closing of a savings and loan institution by the FHLBB. In the case discussed above, the employer remains in control of its business. The employer can remedy the conditions that caused the closing and reopen the business. In the cause of an absolute closing or shut-down of a S & L, in contrast, the previous ownership is ousted from control of the institution and the FSLIC assumes control of the enterprise. In this case, there is no employer to give notice and the after the fact notice requirement cannot be imposed, since the S & L employer has been removed.

(b) Section 639.5(b) Transfers

This section discusses the application of section 2(b)(2) of WARN which excludes certain transfers from the definition of employment loss. It discusses what kind of transfer offer meets the statutory requirement, the definition of "reasonable commuting distance" and discusses the operation of the provision relating to transfers beyond a reasonable commuting distance.

A number of commenters criticized the inclusion in the regulations of the requirement that, in order to qualify as a transfer to which the exclusion applies, a transfer must be to a job that is "substantially equivalent in terms of pay and working conditions." That language was adopted because of the use of the term "equivalent position" in the Senate Report on S. 538. (S. Rep. 100–62, 100th Cong., 1st Sess., 23, 69–70 (June 2, 1987).) The transfer provision in the Senate Bill differed substantially from the present transfer provision in WARN. The Provision in the Senate Bill was an exemption to coverage involving the transfer of "substantially all" of the

affected workers with no more than a two-week break in employment. The WARN transfer provision focuses on the individual worker and permits a break in employment of no more than 6 months. The Department has found nothing in the legislative history to explain these changes. The Department agrees that the language of the transfer provision is not consistent with the definition of employment loss, to which the break in employment provision appears related. The Department concludes that its earlier reliance on the legislative history is not supported by the later changes in the language of the transfer provision. The "substantial equivalence" requirement has, therefore, been deleted from the final regulations. Consistent with the earlier discussion of the law of constructive discharge, language has been added to the final regulation to state that a job offer which constitutes a constructive discharge constitutes an employment loss for purposes of WARN.

Several commenters criticized the adoption of the Internal Revenue Service (IRS) definition of "reasonable commuting distance" as the definition of the same term for WARN purposes. Some commenters suggested other factors that should be added to the definition. These included industry practice, a comparison of the employee's pre- and post-commuting times, transportation costs in the area and the availability of alternate forms of transportation, public transportation and car and vanpools. One commenter suggested that the regulations should state that transfers within a metro-wide area are always within a reasonable commuting distance. Other commenters suggested the adoption of a standard, such as the 30 miles/45 minutes "rule of thumb" contained in the Senate Committee Report on S. 538. (S. Rep. 100-62, 100th Cong., 1st Sess., 23 (June 2, 1987).) One commenter suggested that the regulation should permit the employer to rely on a written acknowledgment from the worker that the commuting distance is reasonable.

The Department borrowed the IRS definition because it appears to be appropriately general to permit considerable flexibility in arriving at a determination of what constitutes a reasonable commuting distance. In doing so, the Department did not intend to adopt all the IRS interpretations that apply to situations not directly relevant to WARN. The language of the final regulation has, therefore, been revised to eliminate specific reference to the IRS regulation. DOL believes that the IRS definition encompasses all of the factors discussed by the commenters. The Department notes that the determination of what is a reasonable commuting distance may be strongly influenced by industry practice or the provisions of collective bargaining agreements. While setting a "rule of thumb" has some appeal, DOL has decided not to do so because any such role could be inappropriate in a large number of situations and may cause more confusion than it eliminates. Similarly, establishing a rule of thumb that transfers within a metropolitan area are always within a reasonable commuting distance is inappropriate, although such transfers will usually meet the definition. In the case of the specific commenter, it appears that the company's collective bargaining agreements recognize the metropolitan area as an area within which transfers are permissible. In that case, any transfer within the metropolitan area would be deemed to be within a reasonable commuting distance. While an employer may seek to obtain written acknowledgments that a transfer is within a reasonable commuting distance, adopting that practice as a rule poses three problems: First, it may be seen to require employers to adopt certain employment practices; second, it will not provide an employer any protection if workers refuse to sign the acknowledgment; and third, the employer might not find out that not enough workers will sign the acknowledgment until after the time to give notice has passed, thus possibly becoming liable for failing to give notice.

(c) Section 639.5(c) Temporary Projects or Facilities

This section discusses the exemption from notice in section 4(a)(1) of WARN. Under that exemption, no notice is required to be given when a plant closing or mass layoff occurs because of the closing of a temporary facility or the completion of a temporary project or undertaking, and the affected workers were hired with the understanding that their employment was limited to the duration of the facility or project. Since such an understanding could arise in a variety of ways, the proposed regulation specifies reference to employment contracts or local or industry employment practices, but leaves the burden of proof to employers. The regulation also discusses some examples of what do and do not constitute temporary projects.

Some commenters, representing the construction industry, requested an exemption for their industry. DOL does not believe that industry-specific exemptions from WARN notice requirements are appropriate or justified. The construction industry and similar industries, including the shipbuilding industry and the roadbuilding industry, will receive appropriate treatment under the temporary projects exemption. To the extent that their workforces only work on a project-specific basis, the employers are exempted from having to give notice under the Act and the regulations. To the extent that they employ workers on a more permanent basis, an exemption would defeat the purpose of WARN.

Several commenters opposed the imposition of a temporal limitation in the definition of "project". They pointed out that certain projects, like dams, take years to complete. The discussion of the duration of a job in § 639.5(c)(4) was not intended to suggest a time limitation on temporary projects. It was intended to respond to comments that suggested that certain long-term contractual arrangements also should be considered temporary projects. Nonetheless, that point can be made without reference to the duration of the contract and the final regulation has been revised to eliminate the reference.

A commenter criticized the same provision, arguing that long-term government contracts can be cancelled with less than 60 days' notice and that employers should be absolved from giving notice in that situation. DOL disagrees with this analysis. The temporary projects exemption applies to the nature of the project, not to the length of the notice given when it is terminated. If an employer receives less than 60 days' notice of cancellation, it may be able to give less than 60 days' notice under the unforeseeable business circumstances exception.

Another commenter pointed out that to qualify as a temporary project, a project must be for a "defined and limited" period and must have been begun with "an announced and ascertainable duration and a terminal point". DOL generally agrees with this characterization of the statutory requirement. It must be recognized, however, that the duration and terminal point of many temporary projects may not be capable of being precisely defined at the beginning of the project due to the vargaries of other conditions and other factors. What is important is that it be clear at the outset that upon the completion of some defined undertaking, the project will be complete.

Several commenters opposed the use of the word "clearly" when describing the workers' understanding that a

project is temporary. Another commenter opposed the assignment to employers of the burden of proof of the existence of the understanding that the project is temporary. The word "clearly" comes from the description of the Congressional understanding of the way the exemption would work in the Conference Report on H.R. 3. (H.R. Rep. No. 100–576, 100th Cong., 2d Sess., 1051 (April 20, 1988)). Although it is true that the statute does not mention the burden of proof as it does in other instances, it is reasonable to assign the burden to the employer in this case because the employer is seeking an exemption from the general rule of 60-day notice (or, legally speaking, is asserting an affirmative defense) and because, in the nature of the language of the exemption, it is the employer that must prove that it communicated the nature of the project. The final regulation has been revised to make it clear that the employer must show that it communicated to its employees the temporary nature of the project or facility. The final regulation also has been revised to make it clear that the test of clear communication focuses on the understandings of the affected employees in general, not on whether each individual employee understood the temporary nature of the project or facility.

Another commenter supported the approach taken in the regulation, arguing that if the worker understood that he/she would be transferred to another project at the completion of the work, the exemption does not apply. DOL agrees with this formulation. The last point is particularly important. Commenters in the shipbuilding industry referred to their "core staff" when describing their operations which the commenters claimed were temporary projects. While the Department agrees that the projects described in the comments qualify as temporary projects, if the term "core staff" refers to workers who remain on the payroll and move from project to project, the temporary project exemption would not apply to those workers because they would not understand that they had been hired to work on a particular project.

Some of the comments suggested that the commenters interpreted the regulation to require written notice that the job is a temporary project and insisted that the regulations should recognize industry practice. DOL believes that these commenters have misread the regulation, which specifically refers to "the employment practices of an industry or a locality". Reference to collective bargaining agreements as a source of evidence of the understanding that the project or facility is temporary also has been added in the final regulations.

One commenter suggested a form of written notice to workers which employers might use to reflect the understanding that the work is on a temporary project.

> Workers on this project are being hired on a project-only basis. When this contract is completed, your job will be terminated. At that time, you may or may not be offered another job on a different project as needs dictate.

Such written notice is not always required by WARN since industry practice may be sufficient to demonstrate that workers understand that their jobs are on temporary projects. It may, however, be useful to some employers to give written notice. To provide assistance to those employers who may wish to give written notice that a job is on a temporary project, DOL has reviewed the commenter's proposed language. While the last sentence might be considered confusing, DOL understands that in the construction and similar industries workers often work for the same employer on different projects. In light of that fact, the notice as a whole appears to adequately convey the temporary nature of the job.

Another commenter suggested that the words "or project" be added to clarify the example in § 639.5(c)(3). The Department agrees and has so revised the final regulation.

A commenter suggested that the temporary projects exemption should apply to depletable resources. This does not appear to be an appropriate extension of the exemption since depletable resources may last for so long a time that they cannot be said to have a termination date, even though eventually the resource may run out.

A commenter asked that the regulations include transportation projects in the regulation. Another commenter asked that it be made clear that the examples in the regulation are not inclusive. DOL agrees with the second commenter; the purpose of the example in the regulation (as with exemples in other parts of these rules) is to be illustrative, not to include every industry that might work on temporary projects. The Department also agrees that roadbuilding projects may qualify as temporary.

A commenter asked that the regulation be clarified as to the construction industry to acknowledge that the completion of a project may result in a layoff from a job but not a separation from the industry. DOL assumes that this is true for most industries that work on temporary projects, but has decided not to revise the regulations to reflect this fact.

The FHLBB stated that when it closes down a savings and loan institution, it sometimes rehires the employees of the closed institution to work on closing down the bank. The FSLIC rehires the workers with the understanding that their work will only last until the affairs of the S & L are wound up, although the time that this task will take is not certain at the time the workers are rehired. The FHLBB suggested that these employees should be covered under the temporary projects exemption. DOL agrees, under the circumstances stated, that these workers are covered under the temporary projects exemption.

A commenter from the trucking industry suggested that the temporary projects exemption should cover "casual" workers in that industry, that is, workers who are hired on an "as needed" basis when freight volumes increase and are laid off indefinitely subject to recall. The Department does not agree that these workers, while their work may be temporary, are working on a temporary project, which is a distinct undertaking not simply an increase in already existing and continuing work. It appears from the description of these workers that most of them will be part-time workers for WARN purposes (i.e., they will work less than 6 months in any 12-month period) and thus are not counted in determining whether a plant closing or mass layoff has occurred.

Another commenter suggested that the definition of temporary project include project-specific fabrication or component manufacturing. To the extent that workers are hired specifically and only to work on fabrication or component manufacturing that relates to a specific project, they will be working on a temporary project. To the extent that workers manufacture or fabricate components for more than one project, they will not qualify. DOL believes that the regulation adequately covers those workers in any industries to which it is applicable.

(d) Section 639.5(d) Strikes and Lockouts Exemption

This section discusses the strikes and lockouts exemption of section 4(d) of WARN. That exemption provides that notice is not required to be given where a plant closing or mass layoff "constitutes" a strike or lockout not intended to evade the requirements of the Act. Notice is also not required when an employer permanently replaces "a person who is deemed to be an

economic striker" under the NLRA. The exemption provision in the Act also indicates that nothing in WARN affects judicial or administrative rulings relating to the hiring of permanent replacements for economic strikers under the NLRA. Because this language is so closely tied to another law, administered by another agency having expertise in this area, DOL has chosen not to attempt any extensive regulatory explanation of this provision.

The Department solicited comments on issues related to strikes and lockouts. One commenter recommended that the regulations should include the definition of lockout which appears in the Conference Report on H.R. 3, i.e., a lockout occurs when, for tactical reasons relating to collective bargaining, an employer refuses to utilize some or all of its employees for the performance of available work. (H.R. Rep. 100-576, 100th Cong., 2d Sess., 1051 (April 20, 1988).) The Department agrees, and has included this definition in § 639.5(d). Consequently, a layoff that occurs in response to a decrease in orders, and thus a lack of work, in anticipation of a possible labor dispute cannot be characterized as a lockout.

The Department also is aware that lockouts may occur for defensive reasons in the course of a labor dispute. The Conference Report definition does not appear to take account of that possibility. In the final regulations, the definition of lockout has been modified to cover defensive lockouts that occur during labor disputes.

Several commenters objected to the inclusion of the phrase "in the normal course of collective bargaining" in the regulation, arguing that it could be construed to exclude sympathy or wildcat strikes from the coverage of the exemption. The Department agrees that this construction is possible but was not intended and has deleted the phrase. Whether a strike or other form of concerted activity will fall under this exemption is ultimately a question which will have to be decided under the NLRA or other applicable laws.

A commenter suggested that the regulations should make it clear that work slowdowns also are included under the strikes/lockouts exemption. This is a complex area of law under the NLRA and other federal statutes. Because other agencies with responsibility to administer these statutes regularly are involved in these areas, the regulations will not address the issue.

A commenter questioned whether notice is required when an employer permanently shuts down or relocates an operation after the commencement of a lockout. The exemption for a lockout is applicable only if the closing or layoff constitutes a lockout. If, after the commencement of a lockout, another decision is made which results in employment loss for a sufficient number of workers (including locked-out workers), as might occur if an employer decided to relocate, notice would be due based on the new circumstances.

A commenter suggested that the regulation should be revised to provide that an employer need not give notice when replacing an unfair labor practice striker since it will be required to rehire that worker at the end of the strike. WARN specifically mentions the permanent replacement of economic strikers but provides no other exceptions for notice of replacement for other kinds of strikers. Also, as discussed above, the Department does not view the strikes/lockouts exemption as applying to situations in which plant closings or mass layoffs are ordered because of other conditions than the particular strike or lockout. For these reasons, and because the status of strikers raises many complex questions under the NLRA and other federal laws, the Department has not revised the regulations in the manner suggested.

A commenter suggested that the regulations provide for some method to determine whether a lockout is intended to evade the purposes of the Act. The commenter suggested that if an employer remains closed for 4 months, it should be required to demonstrate an intent to reopen. The Department does not view this as a practical suggestion, since WARN provides no administrative mechanism for monitoring compliance. Also, given the complexities of the collective bargaining process, DOL can see no basis for imposing arbitrary time limits on the length of strikes or lockouts.

In the preamble to the proposed regulations, the Department also indicated its intent to provide in the final regulations that notice is due to non-strikers at the site at which the strike is occurring and to provide that the strikes/lockouts exemption does not apply to plant closings or mass layoffs that occur at other sites as an indirect result of the strike. It also was indicated that the regulations would be clarified to indicate that the unforeseeable business circumstances exception may well apply to the indirect effects of strikes. The Department invited comments on these issues.

A number of commenters opposed notice to non-strikers. The commenters gave a number of reasons for their opposition, including: (1) The NLRA only requires a union to provide 60 days' notice of contract termination or modification and thus the employer may not know that the strike might happen in time to give WARN notice. (2) The NLRA requires employers to negotiate in good faith and notice might be used as evidence of a lack of good faith. (3) The strike or lockout will generally be for 6 months or less and notice will not be required. (4) The type of employment loss that will occur in a strike situation is not the same type that WARN was intended to address, i.e., the kind of loss that requires planning to get a new job or training. (5) Requiring notice will lead to "preventive" notices or to rolling or periodic notices that WARN seeks to avoid. (6) Since the union alone decides to strike, it makes no sense that Congress intended to cover this situation; also, it would require notice to the union that initiated the strike. (7) Requiring notice to non-strikers gives unions a powerful weapon to expand the impact of strikes and is inconsistent with WARN's philosophy of neutrality with respect to labor law.

While the Department recognizes that the comments raise several good policy arguments for application of the strikes/lockouts exemption to non-strikers, at least at the plant at which the strike occurs, the Department believes that the legislative history is clear that non-strikers were intended to receive notice. During the Senate debates on the bill, Sen. Quayle offered an amendment that would have extended the exemption to non-strikers. (134 CONG. REC. S8667 (daily ed. June 28, 1988) (remarks of See Quayle)). Sen. Metzenbaum, the floor manager of the bill, opposed the amendment and it was defeated. (134 CONG. REC. S8669 (daily ed. June 28, 1988) (remarks of Sen. Metzenbaum)). The final regulations contain language making it clear that notice is due to non-strikers. Where a union which is on strike represents more than one bargaining unit at a single site, non-strikers include the non-striking bargaining unit(s). Notice is also due to those workers who are not part of the bargaining unit which is involved in the labor negotiations that led to the lockout.

The Department notes that if, as a commenter pointed out, most strikes do not last over 6 months, no notice is required under WARN for temporary layoffs that last 6 months or less. Employers should exercise care in deciding not to give notice for this reason in a strike situation, since, as discussed earlier, WARN does apply if the layoff is extended beyond 6 months and the extension is not caused by business circumstances not reasonably

foreseeable at the time the layoff was announced.

Commenters also urged, if the strikes/lockouts exemption is not to apply to plants other than the plant at which the strike is occurring, that the regulations state that the unforeseeable business circumstances basis for reduced notice applies. The Department agrees that it is generally the case that strikes will not be foreseeable. The Department also acknowledges that the unforeseeable business circumstances exception to the 60-day notice requirement may well be applicable in most situations where a strike has effects at other plants, either other plants of the same employer or other plants of other employers. The unforeseeable business circumstances exception equally may apply to the plant at which the strike is occurring. The Department also notes that the "faltering company" exception may also apply in strike/lockout situations and has modified the final regulation accordingly.

The final regulations have been revised to make it clear that the exemption does not apply to the effects of strikes or lockouts at plants other than those at which the strike or lockout actually is occurring and to make it clear that the unforeeable business circumstances exception to the 60-day notice requirement may be applicable to these direct and indirect effects and to layoffs at the struck plant.

(7) Section 639.6 Who Must Receive Notice

Notice must be given to affected employees' representatives, directly to unrepresented affected employees, to the State dislocated worker unit, and to the chief elected official of the unit of local government. Section 639.6 of the regulations clarifies who is to receive notice in each case. The prefatory paragraph describes the general rule and discusses the provision in section 2(b)(1) of WARN relating to the status of employees of the seller in a sale of all or part of the business. This discussion has been revised to make it clear that the provision preserves notice rights, but creates no other employment rights and that the technical termination that may be deemed to occur upon the consummation of the sale does not, in itself, create notice rights. Other than the comments relating to the business sale provisions of WARN, already discussed in the review of § 639.4(c) of these regulations, there were no comments on this section and no other revisions have been made.

(a) Section 639.6(a) Notice to Representatives of Affected Employees

This section states the rule that notice must be served on the chief elected official of the exclusive representative or bargaining agent representing affected employees. It also recommends that, if this person is not an official of the affected local union, notice also be served on the local official.

Commenters suggested that the regulations be revised to clarify that if an employer provides notices to a union, it is not required to provide notice to the individual workers represented by the union or liable if these workers do not receive notice. DOL agrees that both these propositions are correct, but believes that the regulations adequately cover these points.

A commenter suggested that the regulations clarify that in right to work States, notice to the union is effective as notice to both the members of the union and to those non-members who it represents. Another commenter suggested that non-members of a union should receive individual notice. The Department agrees with the first comment, although it applies in non-right to work States as well. The Department believes that this duty to represent non-members in appropriate situations is inherent in the definition of "representative" in § 639.3(d) of this Part. WARN provides that, where there is a representative of affected employees as of the time of notice, an employer must provide notice to that representative rather than directly to the workers. Thus, the second suggestion would not be appropriate.

Commenters suggested that an employer should be required to give notice only to one individual on behalf of a union. While this proposition is generally correct, there may be situations in which a collective bargaining agreement recognizes more than one entity, for example, both a national and a local union, as the exclusive representative. In such cases, notice to the chief elected officer of both entities would be required.

A commenter suggested that the regulations should provide that a union must give notice to the affected employees it represents within 3–5 days and that a penalty should be imposed upon the union for failure to give notice. WARN contains no provisions imposing any notice obligations on unions. The suggestion cannot, therefore, be adopted.

(b) Section 639.6(b) Notice to Affected Employees

This section has been substantially revised in accordance with the previous discussion of the comments on notice to "bumpees" under § 639.3(e). The final regulations provide that notice is required to be given to employees who may reasonably be expected to experience an employment loss, including those workers who lose their jobs because of bumping rights and other factors, to the extent that they can be identified at the time notice is required to be given. If, at the time notice is required to be given, the employer cannot identify the employee who may reasonably be expected to experience an employment loss due to the elimination of a particular position, it is acceptable for the employer to provide notice to the incumbent in that position. The rule also provides that affected employees entitled to notice include part-time as well as full-time employees, since WARN specifically excludes part-time employees from being counted for threshold determination purposes but does not exclude them otherwise.

It is clear that such factors as voluntary separations, early retirements and transfers which occur after notice is given may make it difficult to determine which employees will actually experience employment loss. Commenters asked if, in a situation where it is uncertain who will be terminated or laid off, it is acceptable to give notice to more employees than will actually experience employment loss. Where it is not possible at the time notice is required to be given to determine who may reasonably be expected to experience employment loss, it may also be adviseable for an employer to give notice to other workers who may lose their jobs as the result of the seniority system, both to forewarn them and to avoid potential liability. However, it is not appropriate for an employer to provide blanket notice to workers. As noted earlier, intermediate bumpees need not receive notice if they have bumping rights they can exercise.

A commenter suggested that the regulations be clear that there is no obligation to notify employees of independent contractors and that such employees are not included in the "employee count" for threshold determination purposes. The Department concludes that this principle is adequately covered in the definition of "affected employee" in § 639.3(e).

A commenter opposed any requirement of giving notice to part-time

employees. For the reasons just stated, DOL disagrees that part-time employees are not entitled to notice; part-time employees have the same need to find other work or training as full-time workers.

(c) Section 639.6(c) Notice to the State Dislocated Worker Unit

States are required, under section 311(b)(2) of the Job Training Partnership Act and section 6305(a) of EDWAA, to have operating dislocated worker units as of July 1, 1989. To meet the requirement for notice to these units before they become fully operational and to permit States to set in motion existing worker adjustment assistance programs, the regulations specify that notice served upon the State Governor constitutes service upon the State dislocated worker unit.

A commenter suggested that service on the Governor should be sufficient service on the State dislocated worker unit and that DOL should publish a list of State dislocated worker units. DOL believes that the regulations provide appropriate recognition of the fact that all States will not have finally set up their dislocated worker units by the time these regulations are published and of the need for service of notice on the unit at the same time that workers or their unions get notice so that the States can engage in the rapid response activities that are stressed under EDWAA.

(d) Section 639.6(d) Notice to the Chief Elected Official of the Affected Unit of Local Government

Questions were raised about the identity of the chief elected official of a unit of local government, given the variety of local government structures. In particular, clarification was sought in the situation where local government is run by an elected board. The regulations clarify this situation by providing that the chairperson of the elected board is to receive notice.

(8) Section 639.7 Content of Notice

(a) Section 639.7(a) Notice Must Be Specific

The proposed regulations provide that notice must be specific, that conditional notice may be given in certain circumstances and that notice must contain all of the elements required by the regulations.

The provision on conditional notice provoked numerous comments. Several commenters supported this provision of the regulations. Other commenters opposed it, claiming that the WARN language about ordering plant closings means that notice must be unconditional and must be about a definite event. They also argued that if an event is not foreseeable 60 days in advance, the unforeseeable business circumstances exception should apply to it. The commenters argued that conditional notice under WARN could be used to legitimate kinds of notice which could be illegal under the NLRA. These commenters raised concerns that a conditional notice requirement could lead to "rolling" or overbroad notice and to liability for employers who fail to give conditional notice. They suggested that optional notice providing useful information to workers should be encouraged.

While acknowledging these views, there may nonetheless be situations in which a plant closing or mass layoff are quite foreseeable if a known event, such as the non-renewal of a contract, occurs. If the event and the consequences are foreseeable, the unforeseeable business circumstances exception cannot be available. If notice can be given only when the necessity of the layoff becomes definite, the employer cannot avoid liability. The Department believes that the best remedy for the problem is to permit contingent notice to cover these cases. The final regulations have, therefore, been revised to permit optional conditional notice to serve as compliance with WARN, while narrowing the definition so that the commenters' concerns are ameliorated. Thus, conditional notice is permitted only if there is a definite event, like the renewal of a major contract, the consequences of the occurrence or non-occurrence of which will definitely lead to a covered plant closing or mass layoff less than 60 days after the event. The final regulations provide that conditional notice may not be used to legitimate notices which would be violations of other laws. Further, the regulations specify that conditional notice is optional to avoid the problem of imposing liability on employers for failing to give a conditional notice.

An example of a situation in which conditional notice might be applicable was provided by one commenter, a utility. The commenter operates a nuclear power plant which is the subject of some opposition. A referendum is scheduled to take place to decide whether the utility should continue to operate the plant. If the voters decide that the plant should be closed, the utility may have to begin terminating workers fairly quickly after the referendum occurs. In these circumstances, if a schedule of layoffs can be determined 60 days in advance of the first layoff, conditional notice may be advisable.

(b) Section 639.7(b)–(f) Elements of Notice

These sections in the proposed rule prescribed the elements which must be included in the notices to each of the individuals or entities who are entitled to receive notice. A number of commenters argued that the proposed rule imposed too many requirements on employers and went beyond the requirements of the Act. Comments were, in fact, received on each and every element of the notice. The commenters argued that WARN does not require a specific form of notice and that only simple notice is required under the Act; that the requirements can create other grounds for suit for technical violations of the requirements; that the requirements will discourage employers from providing longer notice and from voluntary compliance. On the specific elements of notice, the commenters were particularly opposed to any requirement that a specific date be given, claiming that employers cannot anticipate a specific date when a layoff will take place 60 or more days in advance. The commenters also opposed identification of the workers involved (in notice to unions) claiming that complex seniority systems made such identification difficult. One commenter supported all the elements of notice specified in the regulation and suggested that the name and address of a company contact person be included in the notice to affected employees.

While the Act does not enumerate specific elements which should be included in the advance written notice of an order for a plant closing or a mass layoff, the purpose of providing notice to the parties mentioned in the Act is to allow each of them to take appropriate action to facilitate training, employment or other adjustments for affected employees. The content of notice to each party is designed to provide information necessary for each of them to take responsible action. The information requested is not difficult to obtain and care was taken to keep the elements of notice to a minimum.

Nonetheless, DOL has reexamined the regulations to ensure that the notice requirements are not overly burdensome on employers while providing sufficient information to permit the other actors in the WARN process to receive the full protection intended by the Act and to perform their functions. Several changes, including clarifying language changes, have been made in the final regulations. In recognition of the difficulty of identifying specific separation dates for individuals 60 days

in advance, the final regulations provide for a 14-day period of flexibility. An employer may give a specific separation date, the beginning date of a 14-day period during which the separation is expected to occur or a combination of specific dates and 14-day periods, if appropriate. This revision applies to the dates in the individual workers' notices and to the date or schedule of dates in notices to representatives and government units.

In the final regulations prescribing the elements of notice to unions, the first and last elements have been combined. The requirement that unions be notified of the identity of other affected unions, the requirement that employers provide the number of affected employees and the requirement for a statement about applicable bumping rights have been eliminated.

In the final regulations prescribing notice to affected employees, the requirement that the notice state the name and address of the plant has been eliminated and a requirement that the employer provide the name and telephone number of a company contact person has been added.

The notice provisions for the State dislocated worker unit and the chief elected official of the affected local government have been combined into one paragraph in the final regulation, although separate notices still are required by WARN for each. The first and last elements of notice have been combined and the provision about the statement of bumping rights has been clarified.

In all of the notices, the requirement that the notice identify whether the proposed action is a plant closing or mass layoff also has been eliminated and the requirement has been revised to require that the employer state whether the planned action is temporary or permanent and, if applicable, to state that the entire single site of employment will be closed.

A new provision has been added to provide an alternative form of notice to the State dislocated worker unit and to the chief elected official of the affected local government. Under this alternative, an employer may provide an abbreviated notice to these parties which states the name and address of the plant at which the action is to take place, the name and telephone number of a company contact person, the first data on which an employment action is expected to take place, and the number of affected employees. All other information required by the regulation must be maintained by the employer at a readily accessible place for use by the State dislocated worker unit and the local government. DOL believes that this alternative provides a reasonable way to ease some of the perceived burden on employers.

DOL believes that the remaining elements of notice are important if the parties are to receive notice which will provide them with the information they need to take the appropriate actions to minimize the effects of the affected employees' employment loss. The name and address of the plant and of a contact person provides basic information to identify the employer who is giving notice, the place at which the plant closing and mass layoff will occur and someone to provide them with additional information, if needed. The date of the layoff or schedule of layoff dates is essential to enable all recipients of notice to understand when employment losses actually will occur. Whether the planned action is permanent or temporary and the date on which it is to occur are important pieces of information to enable workers and service providers to plan and to make decisions about what kind of services workers may need and when the services will be needed. The job titles of the positions to be eliminated and the names of the workers holding those positions (or the numbers of workers for the State dislocated worker unit and the local government) enable unions and service providers to quickly identify the workers who will be affected and the size and scope of the action and the services needed to respond to it. The statement about whether bumping rights exist enables the governmental actors to determine that the workers who will actually need services may be difficult to determine at the outset. The name of each union representing affected employees, and the name and address of the chief elected officer of each union in the notices to State dislocated worker units and local governments is needed for the governmental actors to be able to contact the unions with which they will work to provide services. The statement about whether the entire plant will close provides needed information about job and general economic prospects in the local community and enables workers and the State and local governments to more accurately gauge the kinds of actions that will be needed.

DOL also agrees with commenters who were concerned that technical errors in providing the information required in the regulation could lead to claims that employers violated the Act. Language has been added to the final regulation, in § 639.7(a)(3), to make it clear that the notice must contain the best information available to the employer when the notice is given. The intent of adding this language is to attempt to prevent claims that might arise when an employer makes what turns out to be a factual error because circumstances later changed. DOL recognizes that in developing notices, considerable amounts of information may be required to be reviewed and considered by employers. While the Department expects employers to use their best efforts to be accurate in providing the information required by the regulations, DOL also recognizes that minor, inadvertent errors may be made. The final regulations provide that such minor errors should not be the basis for liability.

DOL notes that it is not the intent of WARN to interfere with collective bargaining contract provisions calling for notice to employees or their unions in advance of WARN's 60-day notice period. The content of notice requirements provide for some flexibility where this situation exists. Such long term notice need not contain all the elements required by this section as long as the remaining information is provided in writing 60 days in advance of the covered action. For example, where such long-term notice is given that otherwise includes all required notice elements but does not identify a definite termination date or 14-day period, the giving of an additional notice specifying a termination date or 14-day period 60 days in advance of that date or period constitutes full compliance with WARN.

In § 639.7(d) of the proposed regulations, prescribing the requirements of notice to affected workers, the regulations require that the notice be "in language understandable to the employee". Several commenters suggested that this statement be revised to make it clear that there is no requirement that notice be in a language other than English. Other commenters asked that the regulations be clarified to reflect that the standard is that the notice be understandable to the average worker. It was not DOL's intention that the regulations require that notices be in a language other than English and the Department does not believe that the language of the proposed regulation suggests such a requirement, so no change has been made. Employers should, however, be aware that under various civil rights laws, notices of various kinds have been required to be given in languages other than English where substantial numbers of recipients of those notices primarily speak another language. Employers whose workforces contain large numbers of such workers may wish to consider whether to

provide notices in a language other than English. The Department agrees with those commenters who suggest a standard of understandability to the average worker and has changed the word "employee" to "employees" to make this point clearer.

(9) Section 639.8 How Is Notice To Be Served

This section provides that any reasonable method of serving notice is acceptable, as long as the intended recipient has the notice in hand 60 days before the separation occurs. Additionally, the regulation indicates that a ticketed notice fails to meet the requirements of WARN.

Commenters suggested that rules should be added to state when mailed notice is deemed to be timely mailed or that mailed notice is deemed served on the date it is postmarked. Commenters also asked that the regulations state that a notice sent in a pay envelope is deemed to be served on the date of the payday on which it is to be delivered. Since WARN and the regulation focus on receipt of the notice and since the time it will take for mailed notice to be received will vary with local conditions and with the location of the recipient, DOL does not believe that any additional rule for when notice is deemed served is appropriate. Employers should mail notice far enough in advance, given local mail conditions, so that the notice will be received 60 days in advance of the date of the plant closing or mass layoff. Section 8(b) of WARN specifies that mailing notice to the employee's last known address or inserting notice in the employee's paycheck are acceptable methods of service. DOL does not view this language as requiring that each employee actually receive notice 60 days in advance of a covered event as long as the method of service is timed so that the employees generally receive timely notice. For the same reason, deeming notice to be served when postmarked will not ensure timely delivery. Similarly, because notice served by insertion in a pay envelope may be delivered or mailed or directly deposited in the worker's bank account with a pay stub being delivered later, DOL does not think that an absolute rule deeming notice to be served on the payday on which the paycheck is to be delivered is appropriate.

(10) Section 639.9 When May Notice Be Given Less Than 60 Day in Advance

The prefatory paragraph of the proposed regulation indicates that three exceptions to giving a full 60 days' notice exist and that they are to be construed narrowly. The paragraph also states that they are to be construed narrowly. The paragraph also states that if one of the exceptions is invoked, the employer must still give as much notice as is practicable, and must give notice containing a brief statement of the reason of the reason for giving less than 60 day's notice and the elements of notice required in § 639.7.

Several commenters disagreed with the statement that all the exceptions should be narrowly construed. Some of these commenters cited specific aspects of the legislative history to show that the unforeseeable business circumstances and natural disaster exceptions should not be narrowly construed. The Department has reviewed the legislative history and agrees that it may not have been appropriate to say that the unforeseeable business circumstances and natural disaster exceptions should be narrowly construed. While the Conference Report on H.R. 3 (H.R. Rep. No. 100–576, 100th Cong., 2nd Sess., 1049 (April 20, 1988)) may be read to suggest a narrow construction of the unforeseeable business circumstances exception because of the various requirements for proving the applicability of the exception that appear in the report, the debates on the bill suggest that the exception was not intended to be narrowly construed. (133 CONG. REC. S9435 (daily ed. July 8, 1987) (remarks of Sen. Kennedy); 134 CONG. REC. S8856, S8857 (daily ed. July 6, 1988) (remarks of Sen. Metzenbaum); 134 CONG. REC. H2370 (daily ed. April 21, 1988) (remarks of Cong. Ford); see also H.R. Rep. No. 100–285, 100th Cong., 1st Sess., 16, 34–35 (August 8, 1987)). Particularly significant are the continued references to the exception when questions were raised about how the bill would work. The legislative history does indicate that the faltering company exception ws intended to be narrowly construed. (H.R. Rep. No. 100–576, 100th Cong., 2nd Sess., 1048 (April 20, 1988)). In the final regulations, the reference to narrow construction has been deleted from the prefatory paragraph. In § 639.9(b), covering the unforeseeable business circumstances exception, the definition of what constitutes an unforeseeable business circumstance has been revised to be more in line with the language of the Conference Report by the addition of the word "dramatic". The language in § 639.9(a), discussion the faltering company exception has been revised to indicate that exception should be narrowly construed.

(a) Section 639.9(a) The "Faltering Company" Exception

This section describes the "faltering company" exception in the language of the Conference Report. (*Id.*). This exception requires that an employer must have been actively seeking capital or business at the time 60-day notice was due to be given, that there must have been a realistic chance to obtain the capital or business; that if the capital or business were obtained it would have been sufficient to keep the business operating for a reasonable period of time; and that the employer must have believed in good faith that giving notice 60 days in advance would have precluded the employer from obtaining the needed capital or business. The regulation also provides that the employer's financial situation will be viewed in a company-wide context.

A commenter suggested that the test for the "faltering company" exception should be whether "similarly situated employers would have followed a similar course of action" and that the regulation should clearly state that failure to obtain the capital or business is not a factor under the test. DOL believes that the first point is correct, or, stated another way, that an employer must demonstrate that it exercised "commercially reasonable business judgment" in its actions. The Department believes that the regulations reflect this standard and has not changed them. The commenter's second point is confusing since the exception requires that the business or financing must have been sufficient to keep the company or the plant open for some reasonable time. Thus, the need for notice will only be triggered if the employer fails to obtain the business or financing it seeks.

Another commenter, representing the food marketing industry, objected to the language that the "faltering company exception will be viewed in a company-wide context". The commenter argued that since retail grocery stores operate on slim profit margins, closing one store may save others and under the regulatory language that would not be possible. DOL does not think this language must be read as narrowly as the commenter does. Congress was concerned with situations in which a company has substantial assets or cash which it simply chooses not to use to save a faltering branch. If the whole position of the company shows that the closing of one branch to save others was a reasonable business judgment, the faltering company exception is available. It should also be noted that,

in some circumstances, it may be appropriate for a company to make a judgment not to use its other assets to save a branch. In this case, the company simply cannot avail itself of the faltering company exception and it must give 60 days' notice.

The same commenter suggested a broad reading of the "faltering company" exception so that grocery stores that run sales and try to attract customers can avail themselves of the exception. The commenter argued that faltering stores will lose employees and customers if they give notice, which will become a self-fulfilling prophecy. The commenter also suggested that the regulations should address cases in which secured creditors intervene and force the closing or sale of one or more stores or in which creditors seek time to sell the business before foreclosing.

The Department believes that the suggestion about running sales is too broad for general application. Any business can make a general claim it was seeking more customers or orders. The faltering company exception requires some more specific efforts to get customers. If the store can show an unusually great effort to attract customers and that there was valid reason to believe that the customers would abandon the store if they knew it would close, the exemption would appear to apply. On the questions about actions by secured creditors, DOL thinks that if it can be shown that the creditors do not want their efforts to be known, the exception would apply.

One commenter suggested that since WARN section 3(b)(3) merely requires the employer to give a brief statement of the reasons for giving less than 60 days' notice, the regulations should follow the burden of proof model of Title VII of the Civil Rights Act and impose the burden on the challenging party to prove that the claim of exception was a pretext if the employer proffers a sworn statement as part of the notice process. The commenter also suggested that the rule should define the terms "good faith" and "reasonable". The commenter also asserted that the rules create a much tougher standard than Congress intended. DOL notes that the language the regulation comes directly from the Conference Report, and that the statements about the burden of proof are a reasonable interpretation of the Report's statements that the employer must show that various of the elements of the exception are met. (*Id*). DOL does not think that the Title VII model is appropriate since, in the case of the assertion of an exception to full notice, the employer is in the position of the proponent of an affirmative defense, i.e., the employer must prove that it is entitled to use the exception. DOL believes that, by referring to "commercially reasonable business judgments", the regulations do define "reasonable" and "good faith" in the context of the faltering company exception.

Another commenter asserted that the narrowness of the "faltering company" exception will preclude any unionized company from using it because it could lead to onerous information disclosure requirements under the NLRA. While the Department is not the agency charged with expertise with respect to the NLRA, DOL believes that the regulations accurately reflect the statutory language and Congressional intent.

(b) Section 636.9(b) The "Unforeseeable Business Circumstances" Exception

This section also draws its language from the Conference Report on H.R. 3. (*Id.*) The regulations define the exception as applying to circumstances that are not reasonably foreseeable at the time 60 days' notice would have been required. The regulation cites some examples of events which might be unforeseeable business circumstances. It focuses the test for determining whether business circumstances were reasonably unforeseeable on the employer's commercially reasonable business judgment.

A commenter suggested that the test for the application of the unforeseeable business circumstances exception is that an event could not "reasonably" have been foreseen and that reasonableness should be determined on an objective standard. The Department agrees with this formulation and believes that the regulations provide an objective test by focusing on the commercial reasonableness of the employer's actions.

The same commenter pointed out that the unforeseeable business circumstances exception still requires that an employer give as much notice as feasible. DOL agrees and has so provided in the regulation.

The same commenter pointed out the provision in the Conference Report that the exception applies only where "it is not economically feasible to require the employer to give notice and wait until the end of the notice period before effecting the plant closing or mass layoff" (*id.*) and asserted that the burden is on the employer to prove feasiblity. The Department believes that the quoted language simply describes an element of the factual predicate that must extist for an event to be an unforeseeable business circumstance; but does not create any kind of separate test. DOL believes that the quoted language merely requires an employer to show that a "sudden, dramatic and unexpected" event occurred which precipitated a covered employment action, which, in light of the circumstances at that plant, could not have been postponed. The test of whether the action could have been postponed is one of commercially reasonable business judgment.

The Deparment solicited comments on examples of unforeseeable business circumstances that might be included in the regulations as illustrating principles applicable to employers generally, and the circumstances in which they might apply. Commenters suggested that DOL include as examples of unforeseeable business circumstances strikes or lockouts elsewhere, loss of or failure to award contracts, unexpected major market downturns, fires, changes in prices and costs, declines in customer orders, State and local regulatory changes, cases in which layoffs become larger than originally expected, loss of raw materials, loss of financing, legislation, court decisions, unavailability of a ship to be repaired, force majeure, actions related to public health and safety, other, and "secondary effects of economic conditions". While the commenters did not respond to the second part of the invitation and state any generally applicable principles, DOL agrees that many of these factors may constitute unforeseeable business circumstances, and has included four examples in the regulations.

What emerges from consideration of the variety of factors mentioned by the commenters is that it is not appropriate to develop a rule defining certain conditions as *per se* unforeseeable business circumstances. While many of the factors suggested by the commenters will, in most cases, be unforeseeable business circumstances, for example, strikes at another plant of the same company, one can conceive of situations in which they would not be reasonably unforeseeable, as where the strike is part of a union busting strategy. Some of the factors mentioned do not seem unforeseeable in many cases. For example, regulatory changes are often preceded by lengthy notice and comment procedures, often have delayed effective dates and sometimes have time to attain compliance built in. The effects of such regulations will not be unforeseeable. The same is true of legislation, which often has delayed effective dates and is the suject of

lengthy public debate. Similarly, while the timing and content of court decisions may not be foreseeable 60 days in advance, the execution of the judgement may be delayed for a long time for a variety of reasons and prudent businessmen make provision for the consequences of adverse judgments. Finally, loss of contracts, particularly government contracts may be preceded by notice and by the opportunity to respond. (It also must be pointed out that DOL does not understand the last of the factors listed and does not mean to suggest approval of this factor.)

What is important is that the circumstance be "sudden, dramatic and unexpected". Each claim of unforeseeable business circumstances must be examined on its own merits, in these terms and in terms of whether the employer reasonably (exercising commercially reasonably business judgment) could not foresee that the even would occur or that it would have the effects it had.

The FHLBB suggested that persons or institutions that take over ailing savings and loan institutions should be considered covered under the unforeseeable business circumstances exception since they may not know all of the problems they face in taking over the ailing institution. While there will be circumstances in which surprise discoveries of bad debts or assets may require covered employment actions to be ordered in less than 60 days and where the unforeseeable business circumstances exception will clearly apply, the Department cannot agree to a blanket application of the exception. These buyers must exercise commercially reasonable business judgement in discovering the problems of the institution it is acquiring and in deciding what employment actions to take in light of these problems; they may not simply rely on the fact that their action was assisted by the Federal Government.

(c) Section 639.9(c) The "Natural Disaster" Exception

This section discusses the exemption for plant closings and mass layoffs caused by natural disasters. The regulation lists some of the conditions that are natural disasters. It provides that the natural disaster exception applies to the direct results of a natural disaster, while the indirect results of a natural disaster may be covered under the unforeseeable business circumstances exception. It also provides that notice must be provided when a natural disaster causes a covered closing or layoff, even if the notice is after the fact.

Several commenters opposed the provision of the regulations that applies the natural disaster exception only to events directly caused by natural disasters. These commenters cited remarks in the floor debates by the sponsor of the natural disaster exception amendment suggesting that the exception applies to the "downstream" effects of natural disasters. (134 CONG. REC. S8687 (daily ed. June 28, 1988) (remarks of Sen. Dole)). These commenters did not discuss the entire debate on the amendment. The amendment originally offered specifically included the direct and indirect effects of natural disasters. (*Id.* at S8686). The floor manager opposed the amendment because of the language about indirect effects. (*Id.* at S8687 (remarks of Sen. Metzenbaum). The amendment was withdrawn, the language stricken and the amendment accepted. (*Id.* at S8688). DOL thinks that the legislative history, considered in its entirety, supports the position taken in the proposed regulations and no change has been made in the final regulations.

Other commenters objected to the requirement that after the fact notice be given when a natural disaster causes a plant closing or mass layoff. In this regard, the statutory language may be confusing. The natural disaster exception, section 3(b)(2)(A), begins with the words "[n]o notice under this Act shall be required". On the other hand, the final subsection of section 3(b) of WARN, section 3(b)(3), which, by its terms, applies to the entire section, to all the exceptions, requires that as much notice as practicable be given when one of the exceptions is invoked. The Department believes that the approach that it has decided upon is the best approach in this ambiguous situation since it is consistent with the needs of workers to have information on whether their jobs will continue to exist and how long they may be without work and thus is consistent with the intent of WARN to provide such information to workers. The final regulation has been revised to conform to the statutory language and to make it clear that such after the fact notice need only contain such information as is available to the employer at the time the notice is given.

(11) Section 639.10 When May Notice Be Extended

This section covers the length of time after the date (or the ending date of the 14-day period) specified in the notice for which the notice is valid. To ensure that the parties who are due notice have the most current and helpful data available and, thus, can make appropriate plans, additional notice is due if the original date or the ending date of the 14-day period is not met. If the postponement is for less than 60 days, the notice need only contain a reference to the earlier notice, the date to which the planned action is postponed, and the reasons for the postponement. This type of notice will provide the parties with needed information and be less burdensome to the employer. If the postponement extends for 60 days or more, the additional notice should be treated as new notice and meet the specified requirements.

Several commenters disagreed with this interpretation, arguing that there is no specific statutory requirement to support it; that a 180-day period is more in keeping with the rolling 90-day aggregation period for determining employment loss under section 3(d); that if any "secondary" notice is required, posting general notice on a bulletin board should be sufficient; that the reasons for extending the layoff date may not enable the employer to make precise calculations of how long the plant may remain open; and that such notices might require the disclosure of confidential information. One commenter supported the approach taken in the regulations and suggested that the regulations make it clear that the short term, less than 60-day postponement notice is mandatory.

DOL believes that the approach it has adopted is most consistent with Congressional intent in two important respects. First, it furthers the Congressional purpose that notice to workers provide the workers and governmental authorities with specific information in order to react to a dislocation event and to obtain new employment or training to minimize the effects of that event. If workers are not informed of changes in planned termination dates their planning will be disrupted and either they will run the risk of losing other opportunities or the employer will lose employees who it may need to carry on its operations. Secondly, DOL's approach is in accord with Congress' express intent to prohibit rolling notice. (134 CONG. REC. S8680 (daily ed. June 28, 1988) (remarks of Sens. Kennedy and Metzenbaum)). The Department also notes that some of the concerns expressed by the commenters will be ameliorated by the provision that notices can identify a 14-day period during which the layoff may take place. The Department does recognize that the notice of short term postponements can create a burden on employers. The final regulations have, therefore, been revised to make it clear that any form of notice or method of providing the information

about a postponement for less than 60 days is acceptable as long as the information about the postponement is effectively communicated to all the affected workers.

A commenter asked the following questions about the application of this provision. If an employer gave notice on January 1, 1989 of a layoff scheduled for December 31, 1989 and then realizes on December 15, 1989 that it can keep open until January 15, 1990, is notice required to be given and, if so, must it be 60 days' notice? Under the regulations, the employer is not required to give a new 60-day notice for a 15-day postponement; but it is required to inform its employers of the postponement in any reasonable way which will get the information to all affected workers. The commenter also asked if a new 60-day notice was required on November 1, 1989 if the employer adheres to the original closing date. The answer is no in the circumstances stated. One notice is sufficient no matter how far in advance it is given if it contains the information required in section 639.7.

(12) Effective Date

Several commenters continued to oppose DOL's "interpretation" of the effective date. These commenters suggested that the final regulations should adopt a definition of the effective date provision of section 11 of WARN that requires notice to begin to be given on the February 4, 1989 effective date of WARN for plant closings or mass layoffs that occur on April 5, 1989. DOL believes that the course it took in the preamble to the proposed regulations was the most correct and appropriate one. DOL recognized that there were three supportable interpretations of the effective date provision. The Department chose not to adopt any interpretation but simply to inform employers of the interpretations and of their possible liability. DOL continues to believe that the issue of the meaning of the effective date is a purely legal issue that the courts will decide without giving any deference to any interpretation that DOL might adopt. Thus, any interpretation that might be adopted possibly could mislead employers to their detriment.

Regulatory Impact

The final rule interprets the provisions of the Worker Adjustment and Retraining Notification Act. It does not have the financial or other impact to make it a major rule and, therefore, preparation of a regulatory impact analysis is not necessary. See Executive Order No. 12291, 5 U.S.C. 601 Note.

At the time the interim interpretative and proposed rules were published, the Department of Labor notified the Chief Counsel for Advocacy, Small Business Administration, and made the certification pursuant to the Regulatory Flexibility Act at 5 U.S.C. 605(b), that the rule would not have a significant economic impact on a significant number of small entities. No significant economic impact would be imposed by the rule.

Paperwork Reduction Act

Pursuant to the Paperwork Reduction Act, information collection requirements imposed by these regulations have been approved by the Office of Management and Budget as a final rule under OMB No. 1205-0276, expiring December 31, 1990.

Public reporting burden for this collection of information is estimated to vary from 64 to 168 hours for 960 responses with an average of 112 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Information Management, Department of Labor, Room N-1301, 200 Constitution Avenue, NW., Washington, DC 20210; and to the Office of Management and Budget, Paperwork Reduction Project (1205-0276), Washington, DC 20503.

List of Subjects for 20 CFR Part 639

Employment, Labor, Labor management relations, Labor unions, Penalties.

Final Rule

Accordingly, Chapter V of Title 20, Code of Federal Regulations, is amended by revising Part 639, to read as follows:

PART 639—WORKER ADJUSTMENT AND RETRAINING NOTIFICATION

Sec.

Authority: 29 U.S.C. 2107(a).

§ 639.1 Purpose and scope.

(a) *Purpose of WARN.* The Worker Adjustment and Retraining Notification Act (WARN or the Act) provides protection to workers, their families and communities by requiring employers to provide notification 60 calendar days in advance of plant closings and mass layoffs. Advance notice provides workers and their families some transition time to adjust to the prospective loss of employment, to seek and obtain alternative jobs and, if necessary, to enter skill training or retraining that will allow these workers to successfully compete in the job market. WARN also provides for notice to State dislocated worker units so that dislocated worker assistance can be promptly provided.

(b) *Scope of these regulations.* These regulations establish basic definitions and rules for giving notice, implementing the provisions of WARN. The Department's objective is to establish clear principles and broad guidelines which can be applied in specific circumstances. However, the Department recognizes that Federal rulemaking cannot address the multitude of industry and company-specific situations in which advance notice will be given.

(c) *Notice encouraged where not required.* Section 7 of the Act states:

> It is the sense of Congress that an employer who is not required to comply with the notice requirements of section 3 should, to the extent possible, provide notice to its employees about a proposal to close a plant or permanently reduce its workforce.

(d) *WARN enforcement.* Enforcement of WARN will be through the courts, as provided in section 5 of the statute. Employees, their representatives and units of local government may initiate civil actions against employers believed to be in violation of § 3 of the Act. The Department of Labor has no legal standing in any enforcement action and, therefore, will not be in a position to issue advisory opinions of specific cases. The Department will provide assistance in understanding these regulations and may revise them from time to time as may be necessary.

(e) *Notice in ambiguous situations.* It is civically desirable and it would appear to be good business practice for an employer to provide advance notice to its workers or unions, local government and the State when terminating a significant number of employees. In practical terms, there are some questions and ambiguities of interpretation inherent in the application of WARN to business practices in the

market economy that cannot be addressed in these regulations. It is therefore prudent for employers to weigh the desirability of advance notice against the possibility of expensive and time-consuming litigation to resolve disputes where notice has not been given. The Department encourages employers to give notice in all circumstances.

(f) *Coordination with job placement and retraining programs.* The Department, through these regulations and through the Trade Adjustment Assistance Program (TAA) and Economic Dislocation and Worker Adjustment Assistance Act (EDWAA) regulations, encourages maximum coordination of the actions and activities of these programs to assure that the negative impact of dislocation on workers is lessened to the extent possible. By providing for notice to the State dislocated worker unit, WARN notice begins the process of assisting workers who will be dislocated.

(g) *WARN not to supersede other laws and contracts.* The provisions of WARN do not supersede any laws or collective bargaining agreements that provide for additional notice or additional rights and remedies. If such law or agreement provides for a longer notice period, WARN notice shall run concurrently with that additional notice period. Collective bargaining agreements may be used to clarify or amplify the terms and conditions of WARN, but may not reduce WARN rights.

§ 639.2 What does WARN require?

WARN requires employers who are planning a plant closing or a mass layoff to give affected employees at least 60 days' notice of such an employment action. While the 60-day period is the minimum for advance notice, this provision is not intended to discourage employers from voluntarily providing longer periods of advance notice. Not all plant closings and layoffs are subject to the Act, and certain employment thresholds must be reached before the Act applies. WARN sets out specific exemptions, and provides for a reduction in the notification period in particular circumstances. Damages and civil penalties can be assessed against employers who violate the Act.

§ 639.3 Definitions.

(a) *Employer.* (1) The term "employer" means any business enterprise that employs—

(i) 100 or more employees, excluding part-time employees; or

(ii) 100 or more employees, including part-time employees, who in the aggregate work at least 4,000 hours per week, exclusive of hours of overtime.

Workers on temporary layoff or on leave who have a reasonable expectation of recall are counted as employees. An employee has a "reasonable expectation of recall" when he/she understands, through notification or through industry practice, that his/her employment with the employer has been temporarily interrupted and that he/she will be recalled to the same or to a similar job. The term "employer" includes non-profit organizations of the requisite size. Regular Federal, State, local and federally recognized Indian tribal governments are not covered. However, the term "employer" includes public and quasi-public entities which engage in business (i.e., take part in a commercial or industrial enterprise, supply a service or good on a mercantile basis, or provide independent management of public assets, raising revenue and making desired investments), and which are separately organized from the regular government, which have their own governing bodies and which have independent authority to manage their personnel and assets.

(2) Under existing legal rules, independent contractors and subsidiaries which are wholly or partially owned by a parent company are treated as separate employers or as a part of the parent or contracting company depending upon the degree of their independence from the parent. Some of the factors to be considered in making this determination are (i) common ownership, (ii) common directors and/or officers, (iii) de facto exercise of control, (iv) unity of personnel policies emanating from a common source, and (v) the dependency of operations.

(3) Workers, other than part-time workers, who are exempt from notice under section 4 of WARN are nonetheless counted as employees for purposes of determining coverage as an employer.

(4) An employer may have one or more sites of employment under common ownership or control. An example would be a major auto maker which has dozens of automobile plants throughout the country. Each plant would be considered a site of employment, but there is only one "employer", the auto maker.

(b) *Plant closing.* The term "plant closing" means the permanent or temporary shutdown of a "single site of employment", or one or more "facilities or operating units" within a single site of employment, if the shutdown results in an "employment loss" during *any 30-day period* at the single site of employment for *50 or more* employees, excluding any part-time employees. An employment action that results in the effective cessation of production or the work performed by a unit, even if a few employees remain, is a shutdown. A "temporary shutdown" triggers the notice requirement only if there are a sufficient number of terminations, layoffs exceeding 6 months, or reductions in hours of work as specified under the definition of "employment loss."

(c) *Mass layoff.* (1) The term "mass layoff" means a reduction in force which first, is not the result of a plant closing, and second, results in an employment loss at the single site of employment during *any 30-day period* for:

(i) *At least 33 percent* of the active employees, excluding part-time employees, and

(ii) *At least 50 employees*, excluding part-time employees.

Where 500 or more employees (excluding part-time employees) are affected, the 33% requirement does not apply, and notice is required if the other criteria are met. Plant closings involve employment loss which results from the shutdown of one or more distinct units within a single site or the entire site. A mass layoff involves employment loss, regardless of whether one or more units are shut down at the site.

(2) Workers, other than part-time workers, who are exempt from notice under section 4 of WARN are nonetheless counted as employees for purposes of determining coverage as a plant closing or mass layoff. For example, if an employer closes a temporary project on which 10 permanent and 40 temporary workers are employed, a covered plant closing has occurred although only 10 workers are entitled to notice.

(d) *Representative.* The term "representative" means an exclusive representative of employees within the meaning of section 9(a) or 8(f) of the National Labor Relations Act or section 2 of the Railway Labor Act.

(e) *Affected employees.* The term "affected employees" means employees who may reasonably be expected to experience an employment loss as a consequence of a proposed plant closing or mass layoff by their employer. This includes individually identifiable employees who will likely lose their jobs because of bumping rights or other factors, to the extent that such individual workers reasonably can be identified at the time notice is required to be given. The term "affected employees" includes managerial and

supervisory employees, but does not include business partners. Consultant or contract employees who have a separate employment relationship with another employer and are paid by that other employer, or who are self-employed, are not "affected employees" of the business to which they are assigned. In addition, for purposes of determining whether coverage thresholds are met, either incumbent workers in jobs being eliminated or, if known 60 days in advance, the actual employees who suffer an employment loss may be counted.

(f) *Employment loss.* (1) The term "employment loss" means (i) an employment termination, other than a discharge for cause, voluntary departure, or retirement, (ii) a layoff exceeding 6 months, or (iii) a reduction in hours of work of individual employees of more than 50% during each month of any 6-month period.

(2) Where a termination or a layoff (see paragraphs (f)(1)(i) and (ii) of this section) is involved, an employment loss does not occur when an employee is reassigned or transferred to employer-sponsored programs, such as retraining or job search activities, as long as the reassignment does not constitute a constructive discharge or other involuntary termination.

(3) An employee is not considered to have experienced an employment loss if the closing or layoff is the result of the relocation or consolidation of part or all of the employer's business and, prior to the closing or layoff—

(i) The employer offers to transfer the employee to a different site of employment within a reasonable commuting distance with no more than a 6-month break in employment, or

(ii) The employer offers to transfer the employee to any other site of employment regardless of distance with no more than a 6-month break in employment, and the employee accepts within 30 days of the offer or of the closing or layoff, whichever is later.

(4) A "relocation or consolidation" of part or all of an employer's business, for purposes of paragraph § 639.3(h)(4), means that some definable business, whether customer orders, product lines, or operations, is transferred to a different site of employment and that transfer results in a plant closing or mass layoff.

(g) *Unit of local government.* The term "unit of local government" means any general purpose political subdivision of a State, which has the power to levy taxes and spend funds and which also has general corporate and police powers. When a covered employment site is located in more than one unit of local government, the employer must give notice to the unit to which it determines it directly paid the highest taxes for the year preceding the year for which the determination is made. All local taxes directly paid to the local government should be aggregated for this purpose.

(h) *Part-time employee.* The term "part-time" employee means an employee who is employed for an average of fewer than 20 hours per week or who has been employed for fewer than 6 of the 12 months preceding the date on which notice is required, including workers who work full-time. This term may include workers who would traditionally be understood as "seasonal" employees. The period to be used for calculating whether a worker has worked "an average of fewer than 20 hours per week" is the shorter of the actual time the worker has been employed or the most recent 90 days.

(i) *Single site of employment.* (1) A single site of employment can refer to either a single location or a group of contiguous locations. Groups of structures which form a campus or industrial park, or separate facilities across the street from one another, may be considered a single site of employment.

(2) There may be several single sites of employment within a single building, such as an office building, if separate employers conduct activities within such a building. For example, an office building housing 50 different businesses will contain 50 single sites of employment. The offices of each employer will be its single site of employment.

(3) Separate buildings or areas which are not directly connected or in immediate proximity may be considered a single site of employment if they are in reasonable geographic proximity, used for the same purpose, and share the same staff and equipment. An example is an employer who manages a number of warehouses in an area but who regularly shifts or rotates the same employees from one building to another.

(4) Non-contiguous sites in the same geographic area which do not share the same staff or operational purpose should not be considered a single site. For example, assembly plants which are located on opposite sides of a town and which are managed by a single employer are separate sites if they employ different workers.

(5) Contiguous buildings owned by the same employer which have separate management, produce different products, and have separate workforces are considered separate single sites of employment.

(6) For workers whose primary duties require travel from point to point, who are outstationed, or whose primary duties involve work outside any of the employer's regular employment sites (e.g., railroad workers, bus drivers, salespersons), the single site of employment to which they are assigned as their home base, from which their work is assigned, or to which they report will be the single site in which they are covered for WARN purposes.

(7) Foreign sites of employment are not covered under WARN. U.S. workers at such sites are counted to determine whether an employer is covered as an employer under § 639.3(a).

(8) The term "single site of employment" may also apply to truly unusual organizational situations where the above criteria do not reasonably apply. The application of this definition with the intent to evade the purpose of the Act to provide notice is not acceptable.

(j) *Facility or operating unit.* The term "facility" refers to a building or buildings. The term "operating unit" refers to an organizationally or operationally distinct product, operation, or specific work function within or across facilities at the single site.

(k) *State dislocated worker unit.* The term "State dislocated worker unit" means a unit designated or created in each State by the Governor under Title III of the Job Training Partnership Act, as amended by EDWAA.

(l) *State.* For the purpose of WARN, the term "State" includes the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, and the U.S. Virgin Islands.

§ 639.4 Who must give notice?

Section 3(a) of WARN states that "an employer shall not order a plant closing or mass layoff until the end of a 60-day period after the employer serves written notice of such an order * * *." Therefore, an employer who is anticipating carrying out a plant closing or mass layoff is required to give notice to affected employees or their representative(s), the State dislocated worker unit and the chief elected official of a unit of local government. (See definitions in § 639.3 of this part.)

(a) It is the responsibility of the employer to decide the most appropriate person within the employer's organization to prepare and deliver the notice to affected employees or their representative(s), the State dislocated worker unit and the chief elected official of a unit of local government. In most instances, this may be the local site

plant manager, the local personnel director or a labor relations officer.

(b) An employer who has previously announced and carried out a short-term layoff (6 months or less) which is being extended beyond 6 months due to business circumstances (including unforeseeable changes in price or cost) not reasonably foreseeable at the time of the initial layoff is required to give notice when it becomes reasonably foreseeable that the extension is required. A layoff extending beyond 6 months from the date the layoff commenced for any other reason shall be treated as an employment loss from the date of its commencement.

(c) In the case of the sale of part or all of a business, section 2(b)(1) of WARN defines who the "employer" is. The seller is responsible for providing notice of any plant closing or mass layoff which takes place up to and including the effective date (time) of the sale, and the buyer is responsible for providing notice of any plant closing or mass layoff that takes place thereafter. Affected employees are always entitled to notice; at all times the employer is responsible for providing notice.

(1) If the seller is made aware of any definite plans on the part of the buyer to carry out a plant closing or mass layoff within 60 days of purchase, the seller may give notice to affected employees as an agent of the buyer, if so empowered. If the seller does not give notice, the buyer is, nevertheless, responsible to give notice. If the seller gives notice as the buyer's agent, the responsibility for notice still remains with the buyer.

(2) It may be prudent for the buyer and seller to determine the impacts of the sale on workers, and to arrange between them for advance notice to be given to affected employees or their representative(s), if a mass layoff or plant closing is planned.

§ 639.5 When must notice be given?

(a) *General rule.* (1) With certain exceptions discussed in paragraphs (b), (c) and (d) of this section and in § 639.9 of this part, notice must be given at least 60 calendar days prior to any planned plant closing or mass layoff, as defined in these regulations. When all employees are not terminated on the same date, the date of the first individual termination within the statutory 30-day or 90-day period triggers the 60-day notice requirement. A worker's last day of employment is considered the date of that worker's layoff. The first and each subsequent group of terminees are entitled to a full 60 days' notice. In order for an employer to decide whether issuing notice is required, the employer should—

(i) Look ahead 30 days and behind 30 days to determine whether employment actions both taken and planned will, in the aggregate for any 30-day period, reach the minimum numbers for a plant closing or a mass layoff and thus trigger the notice requirement; and

(ii) Look ahead 90 days and behind 90 days to determine whether employment actions both taken and planned each of which separately is not of sufficient size to trigger WARN coverage will, in the aggregate for any 90-day period, reach the minimum numbers for a plant closing or a mass layoff and thus trigger the notice requirement. An employer is not, however, required under section 3(d) to give notice if the employer demonstrates that the separate employment losses are the result of separate and distinct actions and causes, and are not an attempt to evade the requirements of WARN.

(2) The point in time at which the number of employees is to be measured for the purpose of determining coverage is the date the first notice is required to be given. If this "snapshot" of the number of employees employed on that date is clearly unrepresentative of the ordinary or average employment level, then a more representative number can be used to determine coverage. Examples of unrepresentative employment levels include cases when the level is near the peak or trough of an employment cycle or when large upward or downward shifts in the number of employees occur around the time notice is to be given. A more representative number may be an average number of employees over a recent period of time or the number of employees on an alternative date which is more representative of normal employment levels. Alternative methods cannot be used to evade the purpose of WARN, and should only be used in unusual circumstances.

(b) *Transfers.* (1) Notice is not required in certain cases involving transfers, as described under the definition of "employment loss" at § 639.3(f) of this part.

(2) An offer of reassignment to a different site of employment should not be deemed to be a "transfer" if the new job constitutes a constructive discharge.

(3) The meaning of the term "reasonable commuting distance" will vary with local and industry conditions. In determining what is a "reasonable commuting distance", consideration should be given to the following factors: geographic accessibility of the place of work, the quality of the roads, customarily available transportation, and the usual travel time.

(4) In cases where the transfer is beyond reasonable commuting distance, the employer may become liable for failure to give notice if an offer to transfer is not accepted within 30 days of the offer or of the closing or layoff (whichever is later). Depending upon when the offer of transfer was made by the employer, the normal 60-day notice period may have expired and the plant closing or mass layoff may have occurred. An employer is, therefore, well advised to provide 60-day advance notice as part of the transfer offer.

(c) *Temporary employment.* (1) No notice is required if the closing is of a temporary facility, or if the closing or layoff is the result of the completion of a particular project or undertaking, and the affected employees were hired with the understanding that their employment was limited to the duration of the facility or the project or undertaking.

(2) Employees must clearly understand at the time of hire that their employment is temporary. When such understandings exist will be determined by reference to employment contracts, collective bargaining agreements, or employment practices of an industry or a locality, but the burden of proof will lie with the employer to show that the temporary nature of the project or facility was clearly communicated should questions arise regarding the temporary employment understandings.

(3) Employers in agriculture and construction frequently hire workers for harvesting, processing, or for work on a particular building or project. Such work may be seasonal but recurring. Such work falls under this exemption if the workers understood at the time they were hired that their work was temporary. In uncertain situations, it may be prudent for employers to clarify temporary work understandings in writing when workers are hired. The same employers may also have permanent employees who work on a variety of jobs and tasks continuously through most of the calendar year. Such employees are not included under this exemption. Giving written notice that a project is temporary will not convert permanent employment into temporary work, making jobs exempt from WARN.

(4) Certain jobs may be related to a specific contract or order. Whether such jobs are temporary depends on whether the contract or order is part of a long-term relationship. For example, an aircraft manufacturer hires workers to produce a standard airplane for the U.S. fleet under a contract with the U.S. Air Force with the expectation that its

contract will continue to be renewed during the foreseeable future. The employees of this manufacturer would not be considered temporary.

(d) *Strikes or lockouts.* The statute provides an exemption for strikes and lockouts which are not intended to evade the requirements of the Act. A lockout occurs when, for tactical or defensive reasons during the course of collective bargaining or during a labor dispute, an employer lawfully refuses to utilize some or all of its employees for the performance of available work. A lockout not related to collective bargaining which is intended as a subterfuge to evade the Act does not qualify for this exemption. A plant closing or mass layoff at a site of employment where a strike or lockout is taking place, which occurs for reasons unrelated to a strike or lockout, is not covered by this exemption. An employer need not give notice when permanently replacing a person who is deemed to be an economic striker under the National Labor Relations Act. Non-striking employees at the same single site of employment who experience a covered employment loss as a result of a strike are entitled to notice; however, situations in which a strike or lockout affects non-striking employees at the same plant may constitute an unforeseeable business circumstance, as discussed in § 639.9, and reduced notice may apply. Similarly, the "faltering company" exception, also discussed in § 639.9 may apply in strike situations. Where a union which is on strike represents more than one bargaining unit at the single site, non-strikers includes the non-striking bargaining unit(s). Notice also is due to those workers who are not a part of the bargaining unit(s) which is involved in the labor negotiations that led to the lockout. Employees at other plants which have not been struck, but at which covered plant closings or mass layoffs occur as a direct or indirect result of a strike or lockout are not covered by the strike/lockout exemption. The unforeseeable business circumstances exception to 60 days' notice also may apply to these closings or layoffs at other plants.

§ 639.6 Who must receive notice?

Section 3(a) of WARN provides for notice to each representative of the affected employees as of the time notice is required to be given or, if there is no such representative at that time, to each affected employee. Notice also must be served on the State dislocated worker unit and the chief elected official of the unit of local government within which a closing or layoff is to occur. Section 2(b)(1) of the Act states that "any person who is an employee of the seller (other than a parttime employee) as of the effective date [time] of the sale shall be considered an employee of the purchaser immediately after the effective date [time] of the sale." This provision preserves the notice rights of the employees of a business that has been sold, but creates no other employment rights. Although a technical termination of the seller's employees may be deemed to have occurred when a sale becomes effective, WARN notice is only required where the employees, in fact, experience a covered employment loss.

(a) *Representative(s) of affected employees.* Written notice is to be served upon the chief elected officer of the exclusive representative(s) or bargaining agent(s) of affected employees at the time of the notice. If this person is not the same as the officer of the local union(s) representing affected employees, it is recommended that a copy also be given to the local union official(s).

(b) *Affected employees.* Notice is required to be given to employees who may reasonably be expected to experience an employment loss. This includes employees who will likely lose their jobs because of bumping rights or other factors, to the extent that such workers can be identified at the time notice is required to be given. If, at the time notice is required to be given, the employer cannot identify the employee who may reasonably be expected to experience an employment loss due to the elimination of a particular position, the employer must provide notice to the incumbent in that position. While part-time employees are not counted in determining whether plant closing or mass layoff thresholds are reached, such workers are due notice.

(c) *State dislocated worker unit.* Notice is to be served upon the State dislocated worker unit. Since the States are restructuring to implement training under EDWAA, service of notice upon the State Governor constitutes service upon the State dislocated worker unit until such time as the Governor makes public State procedures for serving notice to this unit.

(d) *Chief elected official of the unit of local government.* The identity of the chief elected official will vary according to the local government structure. In the case of elected boards, the notice is to be served upon the board's chairperson.

§ 639.7 What must the notice contain?

(a) *Notice must be specific.* (1) All notice must be specific.

(2) Where voluntary notice has been given more than 60 days in advance, but does not contain all of the required elements set out in this section, the employer must ensure that all of the information required by this section is provided in writing to the parties listed in § 639.6 at least 60 days in advance of a covered employment action.

(3) Notice may be given conditional upon the occurrence or nonoccurrence of an event, such as the renewal of a major contract, only when the event is definite and the consequences of its occurrence or nonoccurrence will necessarily, in the normal course of business, lead to a covered plant closing or mass layoff less than 60 days after the event. For example, if the non-renewal of a major contract will lead to the closing of the plant that produces the articles supplied under the contract 30 days after the contract expires, the employer may give notice at least 60 days in advance of the projected closing date which states that if the contract is not renewed, the plant closing will occur on the projected date. The notice must contain each of the elements set out in this section.

(4) The information provided in the notice shall be based on the best information available to the employer at the time the notice is served. It is not the intent of the regulations, that errors in the information provided in a notice that occur because events subsequently change or that are minor, inadvertent errors are to be the basis for finding a violation of WARN.

(b) As used in this section, the term "date" refers to a specific date or to a 14-day period during which a separation or separations are expected to occur. If separations are planned according to a schedule, the schedule should indicate the specific dates on which or the beginning date of each 14-day period during which any separations are expected to occur. Where a 14-day period is used, notice must be given at least 60 days in advance of the first day of the period.

(c) Notice to each representative of affected employees is to contain:

(1) The name and address of the employment site where the plant closing or mass layoff will occur, and the name and telephone number of a company official to contact for further information;

(2) A statement as to whether the planned action is expected to be permanent or temporary and, if the entire plant is to be closed, a statement to that effect;

(3) The expected date of the first separation and the anticipated schedule for making separations;

(4) The job titles of positions to be affected and the names of the workers currently holding affected jobs.

The notice may include additional information useful to the employees such as information on available dislocated worker assistance, and, if the planned action is expected to be temporary, the estimated duration, if known.

(d) Notice to each affected employee who does not have a representative is to be written in language understandable to the employees and is to contain:

(1) A statement as to whether the planned action is expected to be permanent or temporary and, if the entire plant is to be closed, a statement to that effect;

(2) The expected date when the plant closing or mass layoff will commence and the expected date when the individual employee will be separated;

(3) An indication whether or not bumping rights exist;

(4) The name and telephone number of a company official to contact for further information.

The notice may include additional information useful to the employees such as information on available dislocated worker assistance, and, if the planned action is expected to be temporary, the estimated duration, if known.

(e) The notices separately provided to the State dislocated worker unit and to the chief elected official of the unit of local government are to contain:

(1) The name and address of the employment site where the plant closing or mass layoff will occur, and the name and telephone number of a company official to contact for further information;

(2) A statement as to whether the planned action is expected to be permanent or temporary and, if the entire plant is to be closed, a statement to that effect;

(3) The expected date of the first separation, and the anticipated schedule for making separations;

(4) The job titles of positions to be affected, and the number of affected employees in each job classification;

(5) An indication as to whether or not bumping rights exist;

(6) The name of each union representing affected employees, and the name and address of the chief elected officer of each union.

The notice may include additional information useful to the employees such as a statement of whether the planned action is expected to be temporary and, if so, its expected duration.

(f) As an alternative to the notices outlined in paragraph (e) above, an employer may give notice to the State dislocated worker unit and to the unit of local government by providing them with a written notice stating the name of address of the employment site where the plant closing or mass layoff will occur; the name and telephone number of a company official to contact for further information; the expected date of the first separation; and the number of affected employees. The employer is required to maintain the other information listed in § 639.7(e) on site and readily accessible to the State disclocated worker unit and to the unit of general local government. Should this information not be available when requested, it will be deemed a failure to give required notice.

§ 639.8 How is the notice served?

Any reasonable method of delivery to the parties listed under § 639.6 of this part which is designed to ensure receipt of notice of least 60 days before separation is acceptable (e.g., first class mail, personal delivery with optional signed receipt). In the case of notification directly to affected employees, insertion of notice into pay envelopes is another viable option. A ticketed notice, i.e., preprinted notice regularly included in each employee's pay check or pay envelope, does not meet the requirements of WARN.

§ 639.9 When may notice be given less than 60 days in advance?

Section 3(b) of WARN sets forth three conditions under which the notification period may be reduced to less than 60 days. The employer bears the burden of proof that conditions for the exceptions have been met. If one of the exceptions is applicable, the employer must give as much notice as is practicable to the union, non-represented employees, the State dislocated worker unit, and the unit of local government and this may, in some circumstances, be notice after the fact. The employer must, at the time notice actually is given, provide a brief statement of the reason for reducing the notice period, in addition to the other elements set out in § 639.7.

(a) The exception under section 3(b)(1) of WARN, termed "faltering company", applies to plant closings but not to mass layoffs and should be narrowly construed. To qualify for reduced notice under this exception:

(1) An employer must have been actively seeking capital or business at the time that 60-day notice would have been required. That is, the employer must have been seeking financing or refinancing through the arrangement of loans, the issuance of stocks, bonds, or other methods of internally generated financing; or the employer must have been seeking additional money, credit, or business through any other commercially reasonable method. The employer must be able to identify specific actions taken to obtain capital or business.

(2) There must have been a realistic opportunity to obtain the financing or business sought.

(3) The financing or business sought must have been sufficient, if obtained, to have enabled the employer to avoid or postpone the shutdown. The employer must be able to objectively demonstrate that the amount of capital or the volume of new business sought would have enabled the employer to keep the facility, operating unit, or site open for a reasonable period of time.

(4) The employer reasonably and in good faith must have believed that giving the required notice would have precluded the employer from obtaining the needed capital or business. The employer must be able to objectively demonstrate that it reasonably thought that a potential customer or source of financing would have been unwilling to provide the new business or capital if notice were given, that is, if the employees, customers, or the public were aware that the facility, operating unit, or site might have to close. This condition may be satisfied if the employer can show that the financing or business source would not choose to do business with a troubled company or with a company whose workforce would be looking for other jobs. The actions of an employer relying on the "faltering company" exception will be viewed in a company-wide context. Thus, a company with access to capital markets or with cash reserves may not avail itself of this exception by looking solely at the financial condition of the facility, operating unit, or site to be closed.

(b) The "unforeseeable business circumstances" exception under section 3(b)(2)(A) of WARN applies to plant closings and mass layoffs caused by business circumstances that were not reasonably foreseeable at the time that 60-day notice would have been required.

(1) An important indicator of a business circumstance that is not reasonably foreseeable is that the circumstance is caused by some sudden, dramatic, and unexpected action or condition outside the employer's control. A principal client's sudden and unexpected termination of a major

contract with the employer, a strike at a major supplier of the employer, and an unanticipated and dramatic major economic downturn might each be considered a business circumstance that is not reasonably foreseeable. A government ordered closing of an employment site that occurs without prior notice also may be an unforeseeable business circumstance.

(2) The test for determining when business circumstances are not reasonably foreseeable focuses on an employer's business judgment. The employer must exercise such commercially reasonable business judgment as would a similarly situated employer in predicting the demands of its particular market. The employer is not required, however, to accurately predict general economic conditions that also may affect demand for its products or services.

(c) The "natural disaster" exception in section 3(b)(2)(B) of WARN applies to plant closings and mass layoffs due to any form of a natural disaster.

(1) Floods, earthquakes, droughts, storms, tidal waves or tsunamis and similar effects of nature are natural disasters under this provision.

(2) To qualify for this exception, an employer must be able to demonstrate that its plant closing or mass layoff is a direct result of a natural disaster.

(3) While a disaster may preclude full or any advance notice, such notice as is practicable, containing as much of the information required in § 639.7 as is available in the circumstances of the disaster still must be given, whether in advance or after the fact of an employment loss caused by a natural disaster.

(4) Where a plant closing or mass layoff occurs as an indirect result of a natural disaster, the exception does not apply but the "unforeseeable business circumstance" exception described in paragraph (b) of this section may be applicable.

§ 639.10 When may notice be extended?

Additional notice is required when the date or schedule of dates of a planned plant closing or mass layoff is extended beyond the date or the ending date of any 14-day period announced in the original notice as follows:

(a) If the postponement is for less than 60 days, the additional notice should be given as soon as possible to the parties identified in § 639.6 and should include reference to the earlier notice, the date (or 14-day period) to which the planned action is postponed, and the reasons for the postponement. The notice should be given in a manner which will provide the information to all affected employees.

(b) If the postponement is for 60 days or more, the additional notice should be treated as new notice subject to the provisions of §§ 639.5, 639.6 and 639.7 of this part. Rolling notice, in the sense of routine periodic notice, given whether or not a plant closing or mass layoff is impending, and with the intent to evade the purpose of the Act rather than give specific notice as required by WARN, is not acceptable.

Signed at Washington, DC this 13th day of April 1989.

Elizabeth Dole,

Secretary of Labor.

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April 20, 1989

Part III

Department of Commerce

National Oceanic and Atmospheric Administration

Taking of Marine Mammals Incidental to Commercial Fishing Operations; Interim Exemption for Commercial Fisheries; Notice

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 81140-9094]

Taking of Marine Mammals Incidental to Commercial Fishing Operations; Interim Exemption for Commercial Fisheries

AGENCY: National Marine Fisheries Service (NOAA Fisheries), NOAA, Commerce.

ACTION: Notice of final list of fisheries.

SUMMARY: NOAA Fisheries issues this final List of Fisheries associated with the interim exemption for commercial fisheries under section 114 of the Marine Mammal Protection Act of 1972 (MMPA). Section 114 of the MMPA, added by recent amendments, provides for a 5-year exemption for certain incidental takings of marine mammals in the course of commercial fishing.

FOR FURTHER INFORMATION CONTACT: Herbert W. Kaufman, Office of Protected Resources, 301-427-2319; Steven Zimmerman, Alaska Region, National Marine Fisheries Service, P.O. Box 21668, Juneau, AK 99802, 907-586-7233; Brent Norberg, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way NE, Seattle, WA 98115, 206-526-6110; James Lecky, Southwest Region, National Marine Fisheries Service, 300 S. Ferry Street, Terminal Island, CA 90731-7415, 213-514-6664; Douglas Beach, Northeast Region, National Marine Fisheries Service, 1 Blackburn Drive, Gloucester, MA 01930, 508-281-9254; or, Charles Oravetz, Southeast Region, National Marine Fisheries Service, 9450 Koger Blvd., St. Petersburg, FL 33702, 813-893-3366.

SUPPLEMENTARY INFORMATION:

Background

Before the 1988 amendments, the MMPA prohibited the take of marine mammals incidental to commercial fishing operations unless authorized by a general permit or a small take exemption. In order to issue a general permit, NOAA Fisheries was required to determine that the population stock from which a marine mammal was to be taken was within its optimum sustainable population (OSP) and that the marine mammal stock would not be disadvantaged by the incidental take. If these determinations could not be made, no permit could be issued for that particular marine mammal stock. Early in 1988 it became apparent that the necessary determinations to renew certain general permits could not be made and many fishermen would be forced to forgo fishing altogether or risk substantial penalties for violating the MMPA. To address this problem, Congress amended the MMPA based on a proposal developed by representatives of the fishing industry and conservation community.

Section 114 added by Pub. L. 100-711 on November 23, 1988, replaces most earlier provisions of the MMPA for granting incidental take authorizations to commercial fishermen with an interim exemption system valid until October 1, 1993. Section 114 gives fishermen a 5-year exemption from the incidental taking provisions of the MMPA, provided that certain conditions are met. The primary objective of this interim system is to provide a means to obtain reliable information about interactions between commercial fishing activities and marine mammals while allowing commercial fishing operations to continue despite NOAA Fisheries' current inability to make OSP findings. The information collected in conjunction with the exemption system and information on the sizes and trends of marine mammal populations will be used to develop a long-term program to govern the taking of marine mammals associated with commercial fisheries. The Secretary of Commerce is required to provide Congress a proposed system of authorizing incidental takes by January 1, 1992.

The 1988 amendments retain the immediate goal of the MMPA to reduce the incidental kill or serious injury of marine mammals in the course of commercial fishing operations to insignificant levels approaching a zero mortality and serious injury rate. As stated in Senate Report 100-592, Congress anticipated that progress toward this goal would be achieved through education programs and the development of improved fishing gear and techniques, and commended the commitment made by representatives of commercial fishing organizations to undertake and fund a special research program on gear technology and fishing practices, and to educate and inform fishermen of their responsibilities under the MMPA.

The 1988 amendments require the Secretary of Commerce to publish a list of fisheries, along with the marine mammals and number of vessels or persons involved in each such fishery, in three categories as follows:

(I) A frequent incidental taking of marine mammals;

(II) An occasional incidental taking of marine mammals; or

(III) A remote likelihood, or no known incidental taking, of marine mammals.

NOAA Fisheries published an advance notice of proposed rulemaking and proposed list of fisheries on January 27, 1989 (54 FR 4154). Comments were requested by February 27, 1989.

Based on Congressional guidance, NOAA Fisheries interpretation of the 1988 amendments, public comment and meetings and consultations with state and Federal agencies, Regional Fishery Management Councils, and other interested parties, NOAA Fisheries issues this notice of final List of Fisheries. The List of Fisheries, categorized according to frequency of incidental take of marine mammals, will be reviewed at least annually and may be amended, after notice in the **Federal Register** and opportunity for public comment.

The 1988 amendments require that, beginning July 21, 1989, vessel owners will have registered with NOAA Fisheries in order to engage lawfully in any Category I or II fishery. In the near future, NOAA Fisheries will issue regulations to govern the interim exemption system on the taking of marine mammals incidental to commercial fishing operations, and will request public comments.

Under the regulations, owners of vessels will be required to register with NOAA Fisheries, display a decal on their vessel, possess an Exemption Certificate to incidentally take marine mammals, and submit periodic reports to engage lawfully under the MMPA in any Category I or II fishery. To register for an Exemption, vessel owners will be required to supply: their name, address and phone number: vessel name, vessel length, State license number or State registration number, Coast Guard documentation, and tribal plaque number, if appropriate; and, a list of all Category I and II fisheries in which the vessel will participate. A registration fee will also be required. Vessels engaged in Category I fisheries will be required to take on board a natural resources observer if requested by NOAA Fisheries. Owners of vessels engaged *only* in Category III fisheries will not be required to register with NOAA Fisheries or to obtain an Exemption Certificate or decal to fish legally or to incidentally take marine mammals; however, they will be required to submit reports on all marine mammals incidentally killed as a result of their fishing operations. In addition, owners and masters of all vessels will be required to comply with any general regulations, any conditions of the Exemption Certificate issued to the vessel owner, and any special or emergency regulations published under

the authority of section 114 of the MMPA.

Fifty-six comments were received in response to the January 27, 1989, advance notice of proposed rulemaking and proposed list of fisheries. Comments and information were received from Congress, State and Federal agencies, treaty Indian tribes, fishing associations, fishermen, conservation groups and other interested parties. Comments on the criteria and List of Fisheries are summarized below along with NOAA Fisheries' responses. These comments were considered in developing this notice. Comments on the exemption system will be discussed in the notice issuing NOAA Fisheries' regulations governing the exemption system.

Comments and Responses On Criteria for Categorizing Fisheries

1. Commenters recommended that criteria and a system for reviewing and changing categories be developed, and that categories be changed as new information becomes available on a particular fishery.

NOAA Fisheries will review the list of fisheries annually, solicit public comment, and reclassify fisheries as appropriate based on established criteria and all available information. In addition, if available information warrants, the list can be modified at any time, after notice and opportunity for public comment.

2. One commenter supported including intentional harassment to protect gear, catch or person as a type of incidental taking considered in classifying fisheries. Other commenters believed that all types of taking must be considered in categorizing fisheries, since the MMPA's definition of take was not changed by the 1988 amendments. Other commenters believed that intentional takings to protect gear, catch or person should include only serious injury or death, and not harassment. Still others believed that only lethal taking should be considered.

The 1988 amendments to the MMPA did not change the definition of take in section 3. In discussing the exemption system under section 114(b), Senate Report 100-592 indicated that "the term" 'incidental taking', as used in this section, should be considered to mean the entanglement, serious injury, or death of a marine mammal in the course of normal fishing operations." In a subsequent floor statement discussing the amendments, Senator Hollings stated that there is "* * * no intention to redefine the original terms of the act, such as taking." For purposes of categorizing fisheries, NOAA Fisheries considered section 3 of the MMPA, the language of section 114, and the legislative history, including the Senate Report, House Report and floor statements.

3. One commenter agreed with the proposed criteria that did not consider stock status or impacts to marine mammal populations in categorizing fisheries. Other commenters objected to classifying fisheries solely on the average frequency of take without regard to the status or impacts to marine mammal populations or to the total number of animals taken in a fishery. These commenters feared that using only the rate of take could allow a continued large annual take of marine mammals.

Section 114(b)(1) of the MMPA requires NOAA Fisheries to classify fisheries based on the frequency of incidental taking in a fishery. This section does not include criteria based on status of or impacts to marine mammal stocks. Senate Report 100-592 states that fisheries in which the incidental taking of marine mammals is an exceptional event for "any individual fisherman" should be placed in Category III. Therefore, NOAA Fisheries believes that Congress intended fisheries to be classified based on the frequency with which a randomly selected vessel is likely to incidentally take marine mammals. Section 114 contains provisions, such as authority to adopt emergency rules and mitigating measures, to address situations where the incidential taking may be adversely affecting a population.

4. Commenters recommended that the "standard observation period" used to determine frequency of take for classifying fisheries be clearly defined. Otherwise the definitions of frequent, occasional and remote are meaningless. Commenters believed that the standard observation period should be the same for all fisheries to allow comparisons between fisheries of marine mammal interaction rates. One commenter believed that frequency should be defined in terms of the likelihood of an individual vessel taking a marine mammal per fishing season or per year. Other commenters believed frequency should be defined in terms of the likelihood of a vessel taking a marine mammal in one day to help focus agency resources and recommended that specific probabilities be used to define frequent, occasional and remote.

NOAA Fisheries believes that the "standard observation period" to determine frequency of take should be the same for all fisheries so that comparisons between fisheries can be made. This does not mean that observers would be placed on vessels in different fisheries for the same length of time. The specific design of the observer program, including how long an observer will be placed on a particular vessel, will vary among fisheries and will depend on a number of factors, including the length of the fishing trips. To avoid confusion with an observer trip, the term "standard observation period" will not be used.

To determine the frequency to take, it is necessary to define both the level or amount of taking and the time period over which incidental takings will be evaluated. This will allow the calculation of an average rate of taking so that a comparison among fisheries can be made. The rate of taking will be used to distinguish between fisheries with frequent, occasional and remote taking. The values chosen to define these categories should reflect Congressional intent and should be such that fisheries would fall into each category.

One of the primary purposes of the interim exemption system is to obtain reliable information on species and number of marine mammals incidentally taken in commercial fishing operations. Categorizing fisheries will assist NOAA Fisheries in selecting the appropriate method for verifying the reports received from fishermen in a particular fishery. Observers will have the highest probability of seeing incidental takes of marine mammals in fisheries with frequent interactions. Therefore, the expense of placing observers in a Category I fishery is justified by the high probability they will collect sufficient information to accurately assess the total takings in a fishery and to verify the accuracy of fishermen's reports. Observers are not as likely to see marine mammal takes in Category II fisheries and other verification techniques may be more efficient.

In the proposed List of Fisheries, NOAA Fisheries set the level of take per vessel at more than one animal for frequent, one or less for occasional, and near zero for remote. Using this level of take and based on comments and information on the fisheries, NOAA Fisheries believes that a 20-day period is a reasonable time period to evaluate frequency of taking for purposes of classifying fisheries. This interpretation would place observers in fisheries where the likelihood of observing incidental takes of marine mammals would be greatest.

NOAA Fisheries declines to use specific numerical probabilities to define "frequent" "occasional" and "remote" because the information needed to calculate these probabilities

is not available, except for a very small number of fisheries.

5. On commenter believed that another opportunity for public comment should be allowed on any proposed definition of standard observation period because this definition will have significant implications.

Since the 1988 amendments require NOAA Fisheries to publish a final List of Fisheries within 120 days of enactment of the amendments, there is not sufficient time to allow for another public comment period on the criteria before publishing the final List of Fisheries. However, NOAA Fisheries will request public comment on the criteria that should be used in subsequent revisions to the List of Fisheries in the notice issuing its regulations governing the exemption system.

6. Commenters expressed concern about classifying fisheries based solely on fishery-wide averages. These commenters believed that, because the incidental take of marine mammals within a fishery may vary significantly by location and/or time of the year, fisheries should be sub-divided and classified accordingly. Another commenter believed that placing fisheries with different gear and/or operational environments into the same fishery is not appropriate.

NOAA Fisheries will further sub-divide fisheries if there is sufficient information to distinguish the components of the fisheries, based on fishing season, area, gear, etc. However, NOAA Fisheries does not believe that it is appropriate to subdivide a distinct fishery based on variations in the frequency of incidential take of marine mammals. Placing a fishery in different categories at different times within the same fishing season or in different locations within the same fishing area, would be confusing and difficult to administer.

7. Commenters recommended that, in the absence of direct information on the frequency of taking in a particular fishery, the fishery should be put into Category I if the fishery is similar or analogous to a Category I fishery. Commenters believed that fisheries with potentially substantial incidental take rates have been inappropriately placed in Category II because there currently is insufficient evidence from observation of that fishery to support a Category I listing. Other commenters believed that fisheries should not be placed in Category I if there is not sufficient information on the frequency of incidental take. One commenter recommended that if there is not enough information to classify a fishery, then it should be placed in Category II with the provision that research be conducted to allow the collection of necessary data.

In developing the proposed List of Fisheries, if there was no direct information on the frequency of take, NOAA Fisheries used analogies with similar fisheries to place a fishery in Category II, but not in Category I. Placing fisheries in Category II will enable NOAA Fisheries to gather data through reports and verification programs to determine the actual level of taking. This information will be used to revaluate the placement of fisheries into categories.

Senate Report 100-592 recognized "* * * that for the first year * * * the Secretary may not have time to conduct adequate research to determine which fisheries should be included in each list" and therefore directed that certain fisheries be placed in Category I without documented information to substantiate a frequent incidental take. NOAA Fisheries believes that Congress intended that other fisheries be placed in Category I only if there is sufficient information documenting a frequent take of marine mammals. Therefore, NOAA Fisheries has decided not to use analogies to place a fishery in Category I if there is not sufficient information on the frequency of take in the fishery.

8. Commenters urged consistent treatment of similar fisheries. One commenter believed that there is no basis for distinguishing gillnet gear by areas, and that all drift gillnets and that all set gillnets be placed in the same category. While other commenters disagreed and believed that fisheries cannot be classified by analogy because proper categorization requires that fisheries be considered individually, not only by gear type (including type of material, construction and deployment) but also by area, depth, target species, time of year and other considerations. Another commenter believed that factors such as density and diversity of species of marine mammals in the area should be included in drawing analogies.

NOAA Fisheries believes that analogies used for putting fisheries in Categories II and III should not rely on gear type alone. The frequency and occurrence of incidental takes can vary between fisheries using similar gear due to factors such as fishing techniques and specific gear used, methods used to deter marine mammals, target species, seasons and areas fished, and species and distribution of marine mammals in the area. Therefore, when using analogies with other fisheries to place a fishery in Category II or III, NOAA Fisheries will take into account these factors to ensure appropriate treatment of the fishery.

9. One commenter believed requiring information documenting a frequent take to place a fishery in Category I discriminated against foreign fisheries because observers have documented information about the taking of marine mammals in the foreign fishery, but not in similar U.S. fisheries.

Due to the 100 percent observer coverage and the reporting requirements that have been in place, NOAA Fisheries has reliable data on marine mammal catches by foreign vessels fishing in U.S. waters. The frequency of take in many domestic fisheries is less understood. Although this may mean placing some similar foreign and domestic fisheries in different categories, it is not discriminatory. There will be no additional observer requirements for foreign vessels since observer coverage is already required under the Magnuson Fishery Conservation and Management Act. If the data from reports or verification programs document a similar take in the domestic fishery, that fishery will be reclassified.

10. Commenters believe that a fishery should not be placed in the category specified in the Committee Reports if there is information to support its placement in another category. Another commenter recommended that fisheries be placed in Category I based on the Committee reports and not based on any documented information be given a different designation.

The Committee Reports (Senate Report 100–592 and House of Representatives Report 100–970) recognize that the first year section 114 is in effect, there may not be adequate datat to determine accurately the placement of all fisheries into categories. Accordingly, these reports specified placing six fisheries in Category I and two fisheries in Category III. NOAA Fisheries will use Congresssional intent as reflected in these reports as a criterion for classifying fisheries in this final List of Fisheries. However, for future revisions of the list, NOAA Fisheries proposes to use all available data, including data from fishermen reports and results of observer and alternative verification programs, to classify fisheries.

11. One commenter believed that certain fisheries should be placed in "lower" categories because it would result in less paperwork for fishermen, less government interference in the fisheries, and less cost to the taxpayers in administration. Other commenters believed that voluntary compliance with

observer and reporting requirements should be used as a basis for placing fisheries in Category II versus Category I. Other commenters believed that Category I should include only those fisheries that NOAA Fisheries can observe, and should focus first on fisheries that interact with species of concern. Another commenter believed that a fishery should not be placed in Category I if the fishery has been sufficiently studied and an observer program is not needed.

NOAA Fisheries does not believe that section 114 of the MMPA allows for such considerations in classifying fisheries. NOAA Fisheries intends to follow the priorities contained in section 114 of the MMPA for the placement of observers if observers cannot be placed on all Category I fisheries.

12. One commenter recommended that if a fishery is placed in Category II based on the intentional take by some fishermen to protect gear or catch, fishermen who do not wish to take marine mammals intentionally should not be required to obtain an exemption, and should be considered as a Category III fishery.

Congress directed NOAA Fisheries to classify each fishery, not individual fishermen in a fishery. If a fishery is placed in Category I or II, all vessel owners must register to legally fish in these fisheries; the MMPA does not give vessel owners the option to register.

13. One commenter recommended that NOAA Fisheries complete consultations under section 7 of the Endangered Species Act of 1973 (ESA) prior to issuing the final list of Fisheries. During the consultation, the criteria used to classify fisheries should be reviewed since the category in which a particular fishery is placed could adversely affect endangered or threatened species.

Fisheries are classified based only on the likely frequency of taking marine mammals by an individual vessel, and not by the impacts to the marine mammal populations or the total taking. The category in which the fishery is placed does not itself affect endangered and threatened species. NOAA fisheries is consulting under section 7 of the ESA on its regulations and the proposed issuance of Exemptions since these are actions that may affect endangered and threatened species. In addition to these consultations, section 114 of the MMPA contains provisions for special conditions to Exemptions and emergency rules to address impacts to marine mammal populations.

14. Commenters expressed concern over identifying marine mammal species with a particular fishery on the list when accidental entanglement, serious injury or death of such marine mammal is not known to occur. The commenters believed that the list should focus on problems, not species occurring in the same area as the fishery.

The list of marine mammal species involved in each fishery is a listing of all documented or reported instances (including rare and unique instances) of marine mammal interactions. Interactions include both accidental and intentional harassment to deter animals to protect gear and catch, as well as entanglement, injury and mortality. The naming of a species in a particular fishery does not address the magnitude of take and makes no statement regarding the significance of any interactions. The discussions of the individual fisheries accompanying the list provides more information concerning marine mammal interactions.

15. One commenter expressed concern over the listing of endangered species in the list of species involved.

Since exemptions provided by section 114 of the MMPA apply to all species of marine mammals (except the southern sea otter), endangered, threatened and other depleted species are included in the list. Certain takings of endangered species may be exempted from the MMPA's prohibitions. However, the MMPA exemption will not exempt fishermen from the prohibitions on taking endangered and threatened marine mammals under the ESA. To be exempt from the taking prohibitions under the ESA, additional taking authorization will be needed. This issue will be discussed further in the notice issuing NOAA Fisheries' regulations governing the exemption system.

16. One commenter recommended that further clarification of the southern sea otter's special status be provided by annotating the list or by removing mention of the species from the list to avoid confusion.

Based on this comment, NOAA Fisheries will separate the southern (California) sea otter (species code 41) from the Alaska sea otter (species code 13) on the list of marine mammals. Although the interim exemption under section 114 of the MMPA applies to Alaska sea otters, but not to southern sea otters, NOAA Fisheries believes that interactions with southern sea otters should be noted on the List of Fisheries.

17. One commenter recommended that the column entitled "Number of Vessels or Persons" in the summary table show only the actual number of vessels used or vessel days fished.

This column contains the best and most recent available information on the number of vessels/persons licensed to participate in a fishery (or, in the case of Alaska, the number of permits used). This number does not necessarily reflect the number of vessels that participated in a given fishery or effort expended by vessels in the fishery; that information is not always available. NOAA Fisheries will use information gathered through the exemption system to refine these estimates.

18. One commenter asked whether a fishery not identified in any Category would be automatically included in Category III.

NOAA Fisheries realizes that a few fisheries may be omitted from the List of Fisheries. If a fishery is not included in the List, it is considered to be a Category III fishery. As reports and new information become available, the list will be updated.

19. Commenters expressed concern about the "stigma" of being placed in a Category I or II fishery.

One of the purposes of the interim exemption for commercial fisheries is to obtain data so that the effects of interactions between marine mammals and commercial fisheries can be studied. The categories were established by Congress to assist NOAA Fisheries in collecting information on the nature and extent of interactions between fishing activities and marine mammals. Inclusion in Category I or II does not imply that a fishery is adversely affecting a marine mammal population. The data gathered from the interim exemption program and from research on the sizes and trends of marine mammal populations will be used to develop a long-term program to govern the incidental taking of marine mammals associated with commercial fishing operations.

Criteria for Categorizing Fisheries

Under the 1988 amendments, NOAA Fisheries must establish three categories of commercial fisheries according to whether there is frequent (Category I), occasional (Category II) or a remote likelihood or no known (Category III) incidental taking of marine mammals. To classify fisheries, it is necessary to interpret and define "frequent," "occasional" and "remote likelihood." Based on NOAA Fisheries' interpretation of Congressional intent, these terms and the subsequent placement of fisheries into categories were not to be based on the status of stocks of marine mammal species or the likelihood of significant impacts on a species. Actions, such as emergency rules, mitigating measures and alternative verification programs, are available under section 114 to address

situations where incidental take may be adversely affecting a marine mammal population or where more information is needed.

NOAA Fisheries believes that "frequent," "occasional" and "remote likelihood" were intended by Congress to be evaluated on the average frequency with which marine mammals are taken incidentally in a fishery. This interpretation would place observers in fisheries where the likelihood of observing incidental takes of marine mammals would be greatest. In evaluating incidental takes for purposes of categorizing fisheries, NOAA Fisheries considered the definition of take in section 3 of the MMPA, the language of section 114, and the legislative history of the 1988 amendments, including the Senate Report, House Report and floor statements.

To determine the frequency of take, it is necessary to define both the level or amount of taking and the time period over which incidental takings will be evaluated. This will allow the calculation of a rate of taking so that a comparison among fisheries can be made. The rate will be used to distinguish between fisheries with frequent, occasional and rare taking. The values chosen to define these categories should reflect Congressional intent and should be such that fisheries would fall into each category.

One of the primary purposes of the interim exemption system is to obtain reliable information on species and number of marine mammals incidentally taken in commercial fishing operations. Categorizing fisheries will assist NOAA Fisheries in selecting the appropriate method for verifying the reports received from fishermen in a particular fishery. Observers will have the highest probability of seeing incidental takes of marine mammals in fisheries with frequent interactions. Therefore, the expense of placing observers in a Category I fishery is justified by the high probability they will collect sufficient information to assess accurately the total takings in a fishery and to verify the accuracy of fishermen's reports. Observers are not as likely to see marine mammal takes in Category II fisheries and other verification techniques may be more efficient.

In the proposed List of Fisheries, NOAA Fisheries set the level of take at more than one animal for frequent, one or less for occasional, and near zero for remote. Using this level of take, NOAA Fisheries believes that a 20-day period is a reasonable time period to use when determining the frequency of taking for purposes of classifying fisheries.

Using these standards, "frequent" means that it is highly likely that more than one marine mammal will be incidentally taken by a randomly selected vessel in the fishery during a 20-day period. "Occasional" means that there is some likelihood that one marine mammal will be incidentally taken by a randomly selected vessel in the fishery during a 20-day period, but that there is little likelihood that more than one marine mammal will be incidentally taken. And, "remote likelihood" means that it is highly unlikely that any marine mammal will be incidentally taken by a randomly selected vessel in the fishery during a 20-day period.

These definitions will be applied to categorize fisheries according to the following guidelines. If sufficient documented information is available to estimate the frequency of incidental takings of marine mammals, that information is used in categorizing that fishery. If there is not sufficient documented information to estimate the frequency of incidental takings, the agency will consider other factors that would indicate the likelihood of incidental takings such as fishing techniques and gear used, methods used to deter marine mammals, target species, seasons and areas fished, and species and distribution of marine mammals in the area. If these factors indicate a likelihood of at least occasional incidental takings, the fishery will be placed in Category II. If available information or other factors indicate that the likelihood of incidental takings in a fishery would be so rare or exceptional as to be remote or non-existent, that fishery will be placed in Category III.

The Committee Reports (Senate Report 100–592 and House of Representatives Report 100–970) recognize that for the first year section 114 is in effect, there may not be adequate data to determine accurately the placement of all fisheries into categories. Accordingly, these reports specified six fisheries to be included in Category I and two fisheries to be included in Category III. Most of these fisheries were identified and jointly suggested to Congress by representatives of the environmental community and the fishing industry. The Senate Report also specified that the South Unimak (False Pass and Unimak Pass) salmon purse seine fishery should be included in Category I, but the House Report did not. However, in a letter concerning the proposed List of Fisheries, the Senior Senator from Alaska stated that the South Unimak salmon purse seine fishery would not have been suggested for inclusion in Category I if additional information now available had been brought to the attention of the Senate. NOAA Fisheries used this Congressional intent as criteria for classifying fisheries in this final List of Fisheries.

The following criteria were used in classifying fisheries in this final List of Fisheries:

Category I. (1) There is documented information indicating a "frequent" incidental taking of marine mammals in the fishery, or (2) Congress intended that the fishery be placed in Category I. "Frequent" means that it is highly likely that more than one marine mammal will be incidentally taken by a randomly selected vessel in the fishery during a 20-day period.

Category II. (1) There is documented information indicating an "occasional" incidental taking of marine mammals in the fishery, or (2) in the absence of information indicating the frequency of incidental taking of marine mammals, other factors such as fishing techniques, gear used, methods used to deter marine mammals, target species, seasons and areas fished, and species and distribution of marine mammals in the area suggest there is a likelihood of at least an "occasional" incidental taking in the fishery. "Occasional" means that there is some likelihood that one marine mammal will be incidentally taken by a randomly selected vessel in the fishery during a 20-day period, but that there is little likelihood that more than one marine mammal will be incidentally taken.

Category III. (1) There is information indicating no more than a "remote likelihood" of an incidental taking of a marine mammal in the fishery, (2) in the absence of information indicating the frequency of incidental taking of marine mammals, other factors such as fishing techniques, gear used, methods used to deter marine mammals, target species, seasons and areas fished, and species and distribution of marine mammals in the area suggest there is no more than a remote likelihood of an incidental take in the fishery, or (3) Congress intended that the fishery be placed in Category III. "Remote likelihood" means that it is highly unlikely that any marine mammal will be incidentally taken by a randomly selected vessel in the fishery during a 20-day period.

Comments and Responses on the List of Fisheries

1. Commenters recommended that the South Unimak (False Pass and Unimak Pass) salmon purse seine fishery be moved out of Category I.

This fishery was proposed in Category I based on the Senate Committee Report (it was not mentioned in the Committee Report of the House of Representatives). Melteff and Rosenberg (1984) indicated that frequent encounters occur between this fishery and marine mammals. Since publication of Melteff and Rosenberg (1984), the length of this fishery has declined from several hundred hours to 110 hours in 1988. In 1988, the State of Alaska's research vessel RESOLUTION monitored fishing activities in the South Unimak District. During their observations, the crew did not observe or hear of any marine mammals being entangled, seriously injured or killed in this fishery. Commenters and several participants at public meetings corroborated these observations. Although the Senate Report indicated that this fishery should be in Category I, the Senior Senator from Alaska commented subsequently that if the information from the State of Alaska had been available to the Senate, that body would not have included this fishery in Category I. Based on the information received and a clarification by the Senior Senator from Alaska on Congressional intent, NOAA Fisheries concludes that this fishery should be in Category II rather than I.

2. Commenters recommended that the Alaska, Washington, Oregon and California salmon troll fisheries be moved from Category II to III because marine mammals are not entangled, injured or killed in troll gear.

NOAA Fisheries agrees that gear related entanglement, injury or mortality is rare in these fisheries. The salmon troll fisheries are placed in Category II because of the efforts to deter marine mammals to protect gear and/or catch that result in injuries and mortalities.

3. Commenters recommended that the Prince William Sound and Southern Bering Sea sablefish longline fisheries be removed from Category I.

These sablefish longline fisheries were proposed in Category I because of their interactions with killer whales. Because of high rates of depredation by the killer whales (resulting in an estimated 15–25 percent loss of catch) in Prince William Sound, fishermen attempted to deter the animals using a variety of methods. NOAA Fisheries has no evidence to suggest that frequent entanglements, serious injuries or deaths have resulted in the Southern Bering Sea. Moreover, there will be no directed fishery for sablefish in the area east of 170° West (the area in which the preponderance of depredation by killer whales is believe to occur). Therefore, NOAA Fisheries places both of these fisheries in Category II.

4. One commenter stated that there is only a remote likelihood that a marine mammal will be entangled or otherwise taken in the Alaskan longline groundfish fishery.

Because of the absence of data on the taking of marine mammals by this fishery and because the gear and techniques used rarely entangle, seriously injure or kill marine mammals this fishery is placed in Category III with other West Coast longline groundfish fisheries.

5. Commenters stated that the Alaska salmon beach or purse seine fisheries seldom take marine mammals and therefore belong in Category III.

Discussions with State of Alaska Area Fishery Biologists indicate that the mesh size and the method of pursuing the nets result in a very low likelihood of an incidental take. State biologists have noted that, in the rare instances when pinnipeds are trapped inside purse seines, they are able to pass over the cork line before the net is closed. In the rare instances when cetaceans are trapped inside purse seines, they usually exit the net by sounding. Although there have been intentional takings by fishermen to protect catch or gear, comments from the State indicated that such takings rarely result in serious injury or mortality. These fisheries are now listed in Category III along with the Alaska herring beach or purse seine fishery.

6. Commenters questioned whether sea otters might be taken in the Metlakatla fish trap fishery.

NOAA Fisheries is unaware of any records of sea otters interacting with the fish traps. Biologists from the U.S. Fish and Wildlife Service, the U.S. Forest Service and the Alaska Department of Fish and Game who work in the area are unaware of any sightings of sea otters near the Metlakatla fish traps. The nearest location where sea otters are commonly found is approximately 40–50 miles from the traps.

7. Commenters questioned why the Alaska Kuskokwim, Yukon, Norton, and Lotzebue salmon gillnet fisheries were placed in Category III when all other salmon gillnet fisheries in Alaska were in either Category I or II.

NOAA Fisheries and Alaska Department of Fish and Game personnel have noted that these fisheries are almost entirely carried out by Alaska Natives. Direct observations indicate that incidental takes of pinnipeds do not occur in these fisheries because any such potential takings are pre-empted by directed kills for subsistence before the animals encounter the gear. Although takings of harbor porpoises (which are not taken for subsistence) have been recorded in these fisheries, such takings are believed to be very rare.

8. Commenters suggested that the incidental takes of sea otters in the Kodiak Island salmon set gillnet fishery and the Aleutian gillnet fisheries may warrant their inclusion in Category I.

Discussions with U.S. Fish and Wildlife Service sea otter biologists indicate that takings of sea otters by the Kodiak set gillnet fishery does occur. However, the number of incidental takes on the northern side of Kodiak Island are not believed to exceed 25 per season. The level of taking which occurs on the southern side of Kodiak Island is unknow, but is not believed to exceed that of the north side. Based on the number of permits used and the duration of the fishery (June–October) in the Kodiak area, this fishery remains in Category II. Salmon gillnet fisheries are not permitted in the Aleutian Island area.

9. Commenters suggested that because of the size of the Bristol Bay salmon gillnet fishery, the cumulative takes of harbor seals, northern sea lions, beluga whales, harbor porpoise and other marine mammals may warrant its inclusion in Category I.

Discussions with Alaska State Area Biologists indicate that this may not be the case. It has been their observation that during the height of the Bristol Bay gillnet fishery there are so many vessels fishing in such small areas that many pinnipeds leave the area. Even when pinnipeds are present, the extremely high availability of fish reduces the level of competition. Also, the high density of vessels during the most active periods in this fishery largely precludes the use of firearms. Twelve beluga whales were reported taken by this fishery in 1983. The available documented information does not warrant inclusion of this fishery in Category I.

10. One commenter objected to categorizing the tribal commercial fisheries as Category II because the tribal government survey is still in progress to determine the frequency of incidental takes.

NOAA Fisheries recognizes that data collection programs are ongoing in many fisheries; however, NOAA Fisheries is required to publish a final List of Fisheries, based on the best available information, with 120 days of enactment of the amendments. Information received from tribal government surveys, when available, will be used in subsequent reviews and revisions to the List.

11. One commenter objected to considering the Bering Sea/Gulf of Alaska groundfish trawl fishery as one

fishery since it is comprised of a number of individually regulated fisheries in different areas and different seasons.

NOAA Fisheries considered this as a single fishery based on the Committee Reports, but is interested in defining these segments as precisely as possible. The data from fishermen reports and verification programs will be useful in further defining these fisheries and in identifying those segments with frequent interactions.

12. Commenters requested clarification on the location of the Washington set gillnet salmon fishery in Washington's Fisheries Management and Reporting Areas 4, 4A, and 4B.

These areas are located off the north coast of Washington and the western end of the Straits of Juan de Fuca.

13. Commenters proposed that the Washington, Oregon, California thresher shark and swordfish drift net fishery be separated into several different fisheries based on seasonal restrictions and differences in fishing strategy when targeting on swordfish versus thresher shark.

NOAA Fisheries believes that this fishery should be treated as one fishery and should be placed in Category I to be consistent with Congressional intent. The history of the fishery and the States' approach to regulating the fishery indicate that it should be treated as a single fishery. The fishery began in 1977 as a thresher shark fishery in southern California, and swordfish could be landed only as a by-catch. California Department of Fish and Game Regulations were changed in 1982 to allow fishermen to target on swordfish with these drift nets. In addition, the fishery has extended north to fish for thresher shark in central and northern California, and has been operating under experimental fishing permits off Washington and Oregon since 1983. Although fishermen use different strategies and focus on different environmental cues when targeting on swordfish versus thresher shark, the components are not entirely distinct. Shark and swordfish can be landed together at certain times of the year and marine mammal mortalities have been observed in nets, presumably set for swordfish, as well as nets set for thresher shark. Therefore, NOAA Fisheries believes that the available information is insufficient to support clear separation of the components of this fishery. Since Congress identified a concern for one component of this fishery and the components of the fishery are not entirely separate, the fishery remains in Category I, as originally described.

14. One commenter asked whether northern fur seals are taken in the Washington, Oregon, and California thresher shark and swordfish fishery and questioned if the identification of harbor porpoise as a species taken was accurate.

The California Department of Fish and Game observed 66 sets in 1983 and reported the incidental take of 12 different species; northern fur seals were not observed and have not been reported from other sources. State personnel observed harbor porpoise taken in this fishery during the 1988 experimental fishing season off Washington.

15. One commenter asked how the Category II California gillnet fisheries for white sea bass, yellow tail, soupfin shark, white croaker, and bonito-flying fish differ from the California halibut set gillnet fishery in Category I. Commenters also asked whether harbor porpoise should be added to the list of mammals reported taken.

The California Department of Fish and Game has been monitoring gillnet fisheries in California since 1983. Their observations indicate that the rate of take in the white sea bass, etc. fisheries is lower than in the halibut and angel shark fisheries. Reasons for this include differences in gear, seasons, and areas fished. Most yellow tail and white sea bass fishing occurs in southern California and seasonal restrictions reduce effort during the spring and summer months when sea lion abundance is highest (California sea lions are the marine mammal most commonly taken in gillnets). Most of the yellow tail and white sea bass fishermen use nets constructed of multifilament nylon versus monofilament nylon used in the halibut and angel shark nets. Nets in the white sea bass and yellow tail fisheries are also much shorter (150 fathoms) than the halibut and angel shark nets (600 to 1000 fathoms). The soupfin shark nets are also constructed of multifilament nylon and they are generally set in deeper water than halibut and angel shark nets. Multifilament nylon may be more visible to marine mammals thereby contributing to a lower rate of take than is observed in monofilament nets. White croaker and bonito/flying fish nets are constructed of small mesh (less than 3.5 inches stretched) webbing. The rate of entanglement in such small mesh is lower than in the 8 inch or greater mesh size used in the halibut and angel shark fisheries. All these factors contribute to the lower rate of observed entanglement in Category II gillnet fisheries and NOAA Fisheries believes they are listed appropriately.

Harbor porpoise has been added to the list of marine mammals documented to have been taken in this complex of gillnet fisheries. The California Department of Fish and Game observed a harbor porpoise taken in a white croaker gillnet near San Francisco in 1986. Since then State laws have prohibited the use of gillnets in that area and harbor porpoise have not been observed in small mesh nets at any other location.

16. One commenter suggested that the California halibut and angel shark fisheries be separated because they use nets that are different in construction.

NOAA Fisheries combined these fisheries because both types of nets take marine mammals and fishermen will utilize both nets on the same fishing trip. The fisheries can be separated, but information available from the California Department of Fish and Game indicates that both fisheries frequently take marine mammals. Therefore, NOAA Fisheries has separated these fisheries and retained them in Category I.

17. Commenters asked why any Hawaii fisheries were placed in other than Category III.

The Hawaii trolling rod and reel, and the deep sea bottomfish and tuna hand line fisheries have been moved to Category III. Even though interactions with and harassment of marine mammals may occur in localized areas, entanglement, serious injury and mortality are rare events.

18. One commenter stated that most salmon troll fishermen do not shoot at marine mammals and therefore belong in Category III.

Salmon troll fisheries will remain in Category II because available information indicates the intentional lethal removal of marine mammals is an occasional event. As stated above, the MMPA does not provide a mechanism for dividing a fishery so fishermen can choose the category in which they will fish. Instead the law requires NOAA Fisheries to classify each fishery based on frequency or incidental take.

19. One commenter suggested moving the California salmon troll fishery to Category I because Miller *et al.* (1983) estimated that 300 California sea lions are shot annually in the fishery.

Based on the size of the salmon fleet (3,545 permits), which has been stable since entry to the fishery was limited in 1980, a take of 300 animals per year does not qualify as frequent under the criteria for Category I. Therefore, NOAA Fisheries is retaining this fishery in Category II.

20. One commenter stated that in some years the take of pilot whales in the squid purse seine fishery was frequent.

Prior to the 1983 El Niño event, pilot whales and the squid purse seine fishery occurred in the same waters around the southern California Channel Islands and pilot whales were occasionally captured in seine operations. Since El Niño, pilot whales have not been abundant in southern California waters. The probability of a pilot whale take is low, but based on interactions with other species, NOAA Fisheries is retaining the fishery in Category II.

21. One commenter noted that there was no listing for the pelagic drift net fishery for large oceanic pelagic species (primarily swordfish and tuna) along the Atlantic coast, and recommended that if this fishery still exists it should be placed in Category I or II.

NOAA Fisheries is not aware of any vessels operating in this fishery at this time. However, if information becomes available that the fishery is active, it will be added in the proper category.

22. Commenters were opposed to the placement of all domestic squid and mackerel fisheries in Category II, and believed that there is sufficient evidence in certain segments of the fishery to suggest their placement in Category III. The commenters suggested that vessels with less than 2000 horsepower are unlikely to take marine mammals and that bottom-tending squid and mackerel vessels, as opposed to vessels using mid-water gear, will not take marine mammals, and therefore should be placed in Category III.

NOAA Fisheries recognizes that there may be less likelihood of less powerful trawlers taking marine mammals. However, NOAA Fisheries does not have sufficient data to confirm this or to document the differences in the frequency of taking marine mammals between bottom versus mid-water trawls. Observers aboard foreign vessels report an attraction of marine mammals to nets during haulback, suggesting that marine mammals could be caught regardless of vessel towing speed or depth of trawl. NOAA Fisheries believes that additional information is needed to document the effects of these factors on the frequency of marine mammal takings. Reports and results of observer and other verification programs will be useful in making determinations on these factors and in the fisheries.

23. One commenter identified an apparent omission from the list, the South Atlantic and Gulf of Mexico mackerel driftnet fisheries. The commenter believed that this fishery incidentally takes bottlenose dolphins and perhaps other marine mammal species and should be placed in Category II.

This drift gillnet fishery is listed under Category III, Florida—East Coast, Gulf of Mexico pelagics, king and spanish mackerel. Approximately 13 vessels operate in the South Atlantic and Gulf of Mexico mackerel fishery which is localized to the lower East Coast of Florida. Available information does not warrant placing this fishery in Category II.

Final List of Fisheries

NOAA Fisheries issues this final List of Fisheries as required by section 114(b)(1)(B) of the MMPA. Fisheries were categorized based on the frequency of incidental taking using the revised criteria discussed above and additional information received in response to the proposed List of Fisheries. In total, NOAA Fisheries has categorized 167 fisheries in which approximately 181,486 vessels or persons participate in the Pacific, Atlantic (Atl) and Gulf of Mexico (GMX). The information contained in the final List of Fisheries is summarized below:

Category	No. of Fisheries		No. of vessels or persons	
	Pacific	Atl/GMX	Pacific	Atl/GMX
I	9	2	3,641	155
II	24	3	17,023	1,040
III	82	47	28,767	130,860
Total	115	52	49,431	132,055

Tables 1, 2 and 3 describe Pacific Ocean fisheries and Tables 4, 5, and 6 describe Atlantic Ocean and Gulf of Mexico fisheries in Category I, II and III, respectively. These tables list the fisheries along with the marine mammal species for which takings have been documented and the estimated number of vessels/persons involved in the fishery. A brief description of the interactions of the fisheries with marine mammals follows. For additional information, readers are referred to the Status Report on Marine Mammals Involved in Commercial Fisheries (NOAA Fisheries, 1988) and other references listed at the end of this document.

Category I Fisheries—Tables 1 and 4

Tables 1 and 4 comprise the list of commercial fisheries that meet the criteria for Category I—frequent incidental takings of marine mammals.

Category I Fisheries Specified by Congress

The Committee Report of the House of Representatives identified the Prince William Sound/Copper River set and drift gillnet fisheries, Alaska Peninsula (Unimak Pass and False Pass) salmon drift gillnet fishery, Columbia River salmon drift gillnet fishery, the Washington and Oregon thresher shark drift gillnet fishery, and the Bering Sea and Gulf of Alaska groundfish trawl fisheries as Category I fisheries. The Senate Committee Report affirmed the House of Representatives' list and added the Alaska South Unimak (Unimak Pass and False Pass) salmon purse seine fishery which is discussed in detail under category II fisheries. There is not sufficient documented information to estimate accurately the frequency of incidental takings in all of these fisheries. However, NOAA Fisheries has used Congressional intent as the criterion for placing a fishery in Category I in this final List of Fisheries. These fisheries are briefly discussed below in terms of available information concerning incidental takings.

Matkin and Fay (1980) reported that approximately 1,000 marine mammals were entangled or killed in the Prince William Sound/Copper River Delta salmon drift gillnet fishery during the 1978 season. The approximate composition of the kill was 516 harbor seals, 333 northern sea lions, 10 Dall's porpoise, 44 harbor porpoise and 66 Alaska sea otters. Unpublished data collected by Wynne (U.S. Fish and Wildlife Service) indicate that the levels of interaction probably were of the same order of magnitude in 1988.

There is not sufficient information available to estimate reliably the frequency of incidental takings in the Prince William Sound set gillnet fishery for salmon and the Alaska Peninsula (Unimak Pass and False Pass) drift gillnet fishery. However, northern sea lions, harbor seals and Alaska sea otters reside in the area and these species interact with similar gear in the Prince William Sound/Copper River drift gillnet fishery.

The results of monitoring programs for the salmon gillnet fisheries in the Columbia River and adjacent waters were reported by Beach *et al.* (1985). An estimated 335 harbor seals and 45 California sea lions were killed annually incidental to gillnetting in the Columbia River, Willapa Bay and Grays Harbor fisheries. In addition commercial fishermen frequently harass mammals away from their nets. Some of these animals entangle in the nets and drown,

and others are killed after attempts to harass them away from fishing operations fail.

Committee Reports identified the Washington and Oregon drift gillnet fishery for thresher shark as a Category I fishery. NOAA Fisheries believes that these reports identified only part of this fishery. The California driftnet thresher shark fishery represents the southern end of this fishery and should be combined with the Washington/Oregon portion. Therefore, NOAA Fisheries has added the California extension of this fishery to Category I. The thresher shark is a highly migratory species that occurs along the entire west coast. The majority of the thresher shark fleet originates in California where they fish for swordfish as well as shark. The Washington and Oregon fishery is conducted largely by California fishermen who have followed the sharks north in the summer months. The drift gillnet fishery for thresher shark is a relatively young fishery that started around the Channel Islands in southern California in 1977. Miller *et al.* (1983) estimated that the fishery off southern California killed between 600 and 1200 California sea lions between September 1980 and September 1981. In 1983, the State of California promulgated regulations to reduce the incidental mortality of California sea lions. As a result of the new regulations and the 1983–84 El Niño event, the fishery moved offshore and extended to the north and billfish became an important target species. Since this shift, there have been too few observers placed to produce statistically reliable estimates of incidental marine mammal mortality. Diamond *et al.* (1987) reported that the redistribution of the fishing effort contributed to a reduction in the rate of California sea lion mortality but moved the fishery into areas where it interacts with more species of marine mammals. From Diamond *et al.* (1987) and preliminary unpublished data from the 1988 Washington and Oregon observer program, it is clear that 15 different species of marine mammals have been taken in this fishery. Given the potential for this fishery to take large numbers of marine mammals and the diversity of marine mammal species known to have been taken in the fishery, NOAA Fisheries believes including the entire west coast drift net fishery for thresher shark and swordfish in Category I is consistent with Congressional intent.

The Bering Sea-Gulf of Alaska ground fish trawl fishery interacts with 14 different species of marine mammals. Loughlin *et al.* (1983), Loughlin and Nelson (1986), and unpublished observer reports prepared annually by the NOAA Fisheries National Marine Mammal Laboratory, indicate that most of these were taken in the foreign and joint venture fisheries. Loughlin and Nelson (1986) estimated that 958 to 1,436 northern sea lions were killed in the Shelikof Strait fishery in 1982. However, mortalities decreased substantially in following years and the fishery has become largely domestic in nature. Unpublished data from Craig (Alaska Department of Fish and Game) indicate a low level of interaction between the domestic trawl fleet and marine mammals; only 4 northern sea lions were caught during 1,176 trawl hauls observed during the 1978 through 1988 seasons.

Observer data in the North Pacific groundfish trawl fishery indicate that the degree of interaction with marine mammals varies widely according to the time of year, location of the fishery, species of fish sought and the type of trawl gear used. NOAA Fisheries is interested in defining these segments as precisely as possible. The data from fishermen's reports and observers will enable NOAA Fisheries to more accurately identify those segments with frequent interactions and to develop appropriate mitigation measures, if necessary.

Additional Category I Fisheries

The Washington marine set gillnet fishery for salmon in areas 4, 4A, and 4B (Table 1); the California halibut and angel shark set gillnet fisheries (Table 1); the East Coast foreign mackerel trawl fishery (Table 4); and the Gulf of Maine groundfish/mackerel gillnet fishery (Table 4) are included in Category I.

Reports and observations on the Washington marine set gillnet fishery indicate that there is frequent incidental taking of marine mammals in this fishery.

The California Department of Fish and Game has been monitoring set net fisheries in near shore waters since 1983. From 1983 through 1985, the estimated mortality of California sea lions was between 2,207 and 3,427 annually and the estimated mortality of harbor seals increased from 834 to 1,886 animals per year (Hanan *et al.* 1988). The California halibut and angel shark fisheries account for most of this mortality. These fisheries also take common dolphins, harbor porpoise, a small number of gray whales, and southern (California) sea otters (which would not be authorized under the exemption system).

In East Coast fisheries, the foreign mackerel trawl fishery has had 100 percent observer coverage from 1984–88. During this period, a total of 286 animals were killed at an observed rate of kill per day per vessel of 0.1 (or one every 10 days).

The take of marine mammals in the Gulf of Maine groundfish/mackerel gillnet fisheries has been documented in a number of sources. Gilbert and Wynne (1987) documented various marine mammal mortalities (at least 100 marine mammals were taken by 11–22 vessels during a three month season) in a study designed to investigate take levels in a segment of the gillnet fishery that occurs where marine mammal populations were known to be high. The same study documented marine mammal mortalities in the seasonal mackerel fishery near Cape Cod.

Category II Fisheries—Tables 2 and 5

Tables 2 and 5 compromise the list of fisheries that meet the criteria for Category II—occasional incidental take of marine mammals. A brief discussion of these fisheries follows.

South Unimak Salmon Purse Seine Fishery

Based on information received, factual data and a clarification from the Senior Senator from Alaska on Congressional intent, NOAA Fisheries has placed the South Unimak (Unimak Pass and False Pass) salmon purse fishery in Category II rather than Category I. Melteff and Rosenberg (1984) indicated "frequent encounters" occur between the South Unimak (Unimak Pass and False Pass) salmon purse seine fishery and marine mammals. Since publication of Metleff and Rosenberg's report, the length of this fishery has declined from several hundred hours to 110 hours in 1988. In 1988, the State of Alaska's research vessel RESOLUTION monitored fishing activities in the South Unimak Pass District. During their observations, the crew did not observe or hear of any marine mammals being entangled, seriously injured or killed in this fishery.

Additional Category II Fisheries

The salmon gillnet fisheries listed in Table 2 use gear similar to the gear observed by Matkin and Fay (1980) in the Copper River Delta and by Beach *et al.* (1985) in the Columbia River and there is a known incidence of marine mammals in the area. There are also reports indicating that incidental takes of marine mammals are more than a rare or exceptional event in most salmon gillnet fisheries. However, there is insuficient information to estimate reliably the frequency of the takes. Examples of reports in various salmon gillnet fisheries are discussed below.

The NOAA fisheries Alaska Region documented six humpback whale entanglements, resulting in at least one mortality in the southeast Alaska drift gillnet fishery for salmon in 1987. This appears to be an anomalous year and may not be a reliable estimate of the frequency of incidental takes.

NOAA fisheries Alaska Region has received reports that fishermen in the Yakatat set gillnet fishery for salmon occasionally shoot northern sea lions (the amendments prohibit such takings) and harbor seals to prevent loss of catch or damage of gear. This fishery also took a gray whale in 1988.

Twelve beluga whales were reported taken in 1983 in the Bristol Bay set and drift gillnet fisheries for salmon (Frost *et al.* 1984). Few other published reports of interactions with salmon gillnet fisheries in Alaska are available.

Certificate of Inclusion holders have reported incidental marine mammal takes in the Puget Sound and Straits on Juan de Fuca salmon gillnet fishery, but these reports are not sufficient to estimate reliably the actual frequency of incidental takings.

The Klamath River salmon gillnet fishery was solely a subsistence and ceremonial fishery prior to 1987. In 1987 salmon returned to the Klamath River at a rate that provided a surplus that could be sold commercially. A commercial harvest was conducted in 1988, and is expected to continue. In 1980, NOAA Fisheries and the California Department of Fish and Game studied the pinniped interaction with the subsistence fishery. During the period July through September 1980, 13 harbor seals were observed taken in 257 sets. The commercial fishery is of a much shorter duration (August 1 through August 21 in 1988) than the subsistence fishery, but the level of effort is more intense.

The gear used in the gillnet fisheries for California white sea bass, yellow tail, and soupfin shark is similar to the gear used in other fisheries with frequent incidental takings and there is known incidence of marine mammals in the areas fished. These fisheries use mesh sizes large enough to capture California sea lions and harbor seals. Hanan *et al.* (1988) estimated the total mortality of California sea lions and harbor seals in these fisheries to be small compared to the take in the halibut and angel shark fisheries. The white croaker and bonito/flying fish gillnets use smaller mesh but incidental takes of marines mammals are reported and there is some intentional incidental takings.

The entanglement of marine mammals is a rare event in the salmon troll fisheries, but the loss of hooked fish to seals and sea lions occurs. Fishermen use various methods, including firearms, to deter marine mammals from stealing hooked fish. When this type of deterrence has failed, fishermen have been known to shoot at and sometimes kill animals that continue to depredate their catch. Based on interviews with fishermen, Miller *et al.* (1983) reported that approximately 300 California sea lions were killed in the California salmon troll fishery in 1980.

Miller *et al.* (1983) documented some mortality of several species of cetaceans in the California round haul fisheries.

The longline fisheries for sablefish in Prince William Sound and the Southern Bering Sea have been known to interact with killer whales. Because of high rates of depredation by the killer whales (resulting in an estimated 15–25 percent loss of catch) in Prince William Sound, fishermen attempted to deter the animals using a variety of methods. NOAA Fisheries has no evidence to suggest that frequent entanglements, serious injuries or deaths have occurred in the Southern Bering Sea. There will be no directed fishery for sablefish in the area east of 170° West, the area in which the preponderance of depredation by killer whales is believed to have occurred.

In the remainder of the West Coast fisheries listed in Category II (the Metlakatla fishtrap fishery in Alaska, the squid dip net fishery, and the aquaculture salmon fisheries) marine mammals are at least occasionally intentionally injured or killed as a result of fishermen protecting their gear and catch. Information is too sparse to document the frequency of incidental takings.

The available information on the Southern New England, Mid-Atlantic offshore squid and Atlantic Ocean mackerel fisheries (Table 5) indicates that there is some incidental taking of a variety of marine mammals. This is based on observer reports in joint venture operations. There were 33 reported takes of marine mammals from 1985–88 with a high of 20 in 1986.

Information collected by observers on the Japanese fleet of longliners operating in Northeast and Gulf of Mexico waters documented incidental takings of marine mammals. This fleet is similar in most respects to other pelagic longliners in the Atlantic Ocean and Gulf of Mexico pelagic longline fisheries (Table 5).

Category III Fisheries—Table 3 and 6

Tables 3 and 6 comprise the list of fisheries that meet the criteria for Category III—a remote likelihood of or no known incidental taking of a marine mammal.

Category III Fisheries Specified by Congress

The Senate Committee Report recommended that the shrimp trawl fishery and menhaden purse seine fisher in the Atlantic Ocean and the Gulf of Mexico be placed in Category III. A large number of vessels participate in these fisheries with a small take of bottlenose dolphins and manatees.

Additional Category III Fisheries

The Hawaiian trolling rod-and-reel, deep sea bottom, and tuna hand line fisheries interact with marine mammals in localized areas. Entanglement, serious injury and mortality of marine mammals are rare events. The methods of harassment, to deter marine mammals, which are used in these fisheries are not likely to result in injury or mortality.

There is an absence of data on the taking of marine mammals by the Alaskan longline groundfish fishery. The gear and techniques used rarely entangle, seriously injure or kill marine mammals. This fishery is combined with other West Coast longline groundfish fisheries in Category III.

State of Alaska Area Fishery Biologists indicate that the mesh size and the method of pursuing the nets result in a very low likelihood of an incidental take in the Alaska salmon beach or purse seine fisheries. State biologists noted that, in the rare instances when pinnipeds are trapped inside purse seines, they are able to pass over the cork line before the net is closed. In the rate instances when cetaceans are trapped inside purse seines, they usually exit the net by sounding. Although there have been intentional takings by fishermen to protect catch or gear, comments from the State indicated that the likelihood of such takings occurring is rare. These fisheries are now combined with the Alaska herring beach or purse seines fishery in Category III.

NOAA Fisheries and Alaska Department of Fish and Game personnel have noted that the Alaska Kuskokwim, Yukon, Norton, Kotzebue salmon gillnet fisheries are almost entirely carried out by Alaska natives. Direct observations indicate that incidental takes of pinnipeds do not occur in these fisheries because any such potential takings are pre-empted by directed kills for subsistence before the animals encounter the gear. Although takings of harbor porpoises (which are not taken for subsistence) have been recorded in these fisheries, such takings are believed to be very rare.

The incidental take of marine mammals in the other Category III gillnet fisheries identified in Table 3 is rare because the seasons are extremely short (e.g., herring fisheries), the mesh size is too small to entangle mammals (e.g., shad, smelt, and herring), or they are conducted in areas where mammals generally are not present (e.g., mullet).

Troll fisheries for species other than salmon rarely report losses of fish to marine mammals. Incidental take in troll fisheries usually occurs as intentional lethal removal of animals that are depredating catch and gear. The troll fisheries identified in Table 3 have not reported fish losses and troll gear rarely entangles a marine mammal.

Marine mammal interactions have been documented for only a few of the round haul fisheries (including beach seines and throw nets) identified in Table 3. The likelihood of entanglement, serious injury, or mortality of marine mammals as a result of these interactions is rare.

Marine mammal interactions have also been documented for longline fisheries, but the likelihood of entanglement or intentional takings is rare.

On rare occasions, marine mammals may become entrapped in West Coast trawl nets. In the Pacific whiting fishery observers have documented between 1 and 12 takings of marine mammals per year since 1976 by foreign and joint venture operations. Interactions tend to be with pinnipeds attempting to remove fish from the cod end as the net is retrieved (Miller *et al.* 1983). Fishermen generally are not bothered by this and few reports of intentional injuries or killings are known.

The nature of the gear or methods used in the remainder of the fisheries in Table 3 is such that the likelihood of entanglement, serious injury, or mortality of a marine mammal or intentional takings to protect gear or catch is rare.

The Gulf of Maine (GME) Tub Trawl identified in Table 6, is a bottom longline operation that occurs within 25 miles of shore. The interactions reported usually involve seals robbing bait and fish from the hooks. Marine Mammals are rarely entangled.

Only five vessels are licensed for the GME, Southern New England (SNE), Mid-Atlantic (MDA) Atlantic bluefin tuna purse seize fishery. In 1986, three humpback whales were reported taken by these vessels. This appears to be an anomalous event because there have been no other reports of marine mammals taken in other years. The season for this fishery is very short and the purse seines are relatively small compared to those used in other types of tuna fisheries.

There have been no reports of marine mammal mortalities in the GME Atlantic Herring Purse Seine and Fixed Gear fisheries. Marine mammals do become captured by geat in these fisheries, but because mesh size of nets used is small there is only a small chance of entanglement. When marine mammals are captured in this gear, they are generally released without injury.

Based on gear type and areas fished, the GME, SNE and MDA coastal gillnet fisheries have only a small chance of incidentally taking marine mammals. These fisheries take place within the lower reaches of the large river systems, or near the coastal embayments in the spring during anadromous fish runs. Marine mammal abundance in the coastal areas is usually low at that time. A gillnet fishery operates year-round in the Mid-Atlantic area for various pelagic fish species. The fine mesh nets do not entangle the larger mammal species that frequent the area.

There have been some reports of entanglement of marine mammals in gear used by SNE and MDA Trap and Pound Net fishery. The reports of entanglement often involve decaying carcasses that have floated into the gear.

There have been periodic reports of marine mammals, including large cetaceans and manatees, being entangled in lobster and crab lines and gear in the Atlantic Ocean and Gulf of Mexico fisheries. However, given the large number of individual vessel/gear owners, the nature of these fisheries and the gear type used, the likelihood of incidental takings is rare.

The GME Atlantic salmon farming fishery is a growing industry along the coast of Maine. The marine mammal interactions involve seal interference with the pens. Nonharassing methods, such as double netting around the pens, have been used to protect fish to date. At this time, there does not appear to be more than a rare chance of entanglement or intentional takings of these marine mammals.

For the remaining fisheries identified in Table 6, there is only a rare chance of incidental takings based on gear type, the nature of these fisheries, and other factors.

List of Fisheries Interim Exemption for Commercial Fisheries

TABLE 1.—CATEGORY I COMMERCIAL FISHERIES IN THE PACIFIC OCEAN

Fishery	Estimated number of vessels/ persons	Marine mammal species involved
Gillnet Fisheries, Salmonids:		
AK Prince William Sound, drift gillnet.	525	2, 6, 13, 14, 15.
AK Prince William Sound, set gillnet.	17	2, 6, 13, 15.
AK Peninsula, drift gillnet.	164	2, 6, 13, 15 30.
WA marine set gillnet, in Areas 4, 4A, and 4B.	66	6, 15, 30.
WA, OR Lower Columbia River Region, Willipa Bay, Grays Harbor (includes rivers, restuaries, etc.), drift gillnet.	914	2, 3, 6, 30.
Gillnet Fisheries, Other Finfish:		
WA, OR, CA thresher shark and swordfish, drift gillnet.	309	2, 3, 6, 11, 14, 15, 16, 17, 18, 22, 23, 29, 30, 32, 33.
CA California halibut, set gillnet.	788	3, 6, 41, 15, 16, 30.
CA angel shark, set gillnet.	788	3, 6, 15, 16, 30.
Trawl Fisheries, Groundfish:		
AK Bering Sea/ Gulf of Alaska.	70	1, 2, 5, 6, 7, 8, 9, 10, 11, 13, 14, 15, 25, 32.

TABLE 2.—CATEGORY II COMMERCIAL FISHERIES IN THE PACIFIC OCEAN

Fishery	Estimated number of vessels/ persons	Marine mammal species involved
Gillnet Fisheries, Salmonids:		
AK Southeast Alaska, drift gillnet.	460	2, 6, 13, 14, 15, 25, 30, 31.
AK Yakutat—set gillnet.	154	2, 6, 13, 14, 30.
AK Cook Inlet, set and drift gillnet.	1,213	2, 6, 13, 15, 26.
AK Kokiak—set gillnet.	174	2, 6, 13, 15.
AK Peninsula—set gillnet.	100	2, 6, 13, 30.
AK Bristol Bay, set and drift gillnet.	2,692	2, 6, 26, 30.

TABLE 2.—CATEGORY II COMMERCIAL FISHERIES IN THE PACIFIC OCEAN—Continued

Fishery	Estimated number of vessels/ persons	Marine mammal species involved
WA Puget Sound Region, Hood Canal, Straits of Juan de Fuca (includes rivers, estuaries, etc.), set and drift gillnet.	3,900	1, 2, 3, 6, 14, 15, 25.
WA coastal river, gillnet.	255	2, 3, 6.
CA Klamath River, gillnet.	600	3, 6.
Gillnet Fisheries, Other Finfish:		
AK gillnets	6	2, 6.
CA gillnets for white sea bass, yellow tail, soupfin shark, white croaker, bonito/flying fish.	144	3, 6, 14, 15, 27, 30.
Purse Seine Fisheries, Salmon:		
AK South Unimak (False Pass and Unimak Pass).	102	1, 2, 13.
Troll Fisheries:		
AK salmon	1,607	1, 2, 6, 28, 31.
WA, OR, CA salmon.	4,727	2, 3, 6.
Round Haul (seine and lampara), Beach Seine, and Throw Net Fisheries:		
CA herring purse seine.	43	3, 6.
CA anchovy, mackerel, tuna purse seine.	330	3, 27.
CA sardine, purse seine.	345	3, 27.
CA squid, purse seine.	40	3, 22, 23, 27.
Long Line/Set Line Fisheries, Sablefish:		
AK Prince William Sound.	25	25, 28.
AK Southern Bering Sea.	66	25.
Pot, Ring Net, and Trap Fisheries:		
AK Metlakatla, fish trap.	4	2, 6.
Dip Net Fisheries:		
CA squid	10	3, 23.
Aquaculture, Ranch Pens:		
WA, OR salmon, net pens.	21	2, 3, 6.
OR salmon ranch	5	3, 6.

TABLE 3.—CATEGORY III COMMERCIAL FISHERIES IN THE PACIFIC OCEAN

Fishery	Estimated number of vessels/ persons	Marine mammal species involved
Gillnet Fisheries:		
AK Kuskokwim, Yukon, Norton, Kotzebue salmon gillnets.	1,808	15.
AK herring only	1,374	2, 6.
WA, OR Upper Columbia River Basin (above Bonneville Dam) salmon and other finfish, gillnets.	100	3.
WA, OR, CA gillnets for herring, smelt, shad, sturgeon, bottom fish, mullet, perch, rockfish.	1,218	3, 6.
HI gillnet	81	None Documented.
Troll Fisheries:		
Non-salmon troll fisheries, AK North Pacific halibut, AK bottom fish, WA, OR, CA albacore, groundfish, bottom fish, CA halibut.	1,354	4, 6.
HI trolling, rod and reel.	903	20, 21, 24.
Guam tuna	<50	None Documented.
Commonwealth of the Northern Mariana Islands, tuna.	<50	None Documented.
American Samoa, tuna.	<50	None Documented.
Purse Seine, Beach Seine, Round Haul (seine and lampara) and Throw Net Fisheries:		
AK salmon/herring, beach or purse seine.	1,749	2, 13, 15.
AK other finfish	9	None Documented.
WA salmon, purse seine.	440	6, 14.
WA salmon, reef net.	53	6.
WA, OR herring, smelt, squid, purse seine.	100	3, 6.
WA beach seine all species.	199	None Documented.
HI purse seine	18	None Documented.
HI opelu/akule net	3	None Documented.
HI throw net, cast net.	24	None Documented.
HI net unclassified	8	None Documented.

TABLE 3.—CATEGORY III COMMERCIAL FISHERIES IN THE PACIFIC OCEAN—Continued

Fishery	Estimated number of vessels/ persons	Marine mammal species involved
Western Pacific yellowfin tuna, purse seine (South Pacific Tuna Treaty.	32	None Documented.
Long Line/Set Line Fisheries:		
AK groundfish	1,607	2, 31.
AK, WA, OR, North Pacific halibut	5,893	2, 4, 25, 28.
WA, OR, CA groundfish, bottomfish.	367	3, 4, 6, 17
CA shark/bonito	10	3.
HI ahi flagline	18	21, 24.
Trawl Fisheries:		
AK food/bait herring.	2	None Documented.
AK, WA, OR, CA shrimp.	382	None Documented.
WA, OR, CA groundfish, squid, smelt, bottomfish.	585	1, 2, 3, 6, 14, 17, 27, 23.
CA California halibut.	25	3.
CA sea cucumber	6	None Documented.
Pot, Ring Net, and Trap Fisheries:		
AK shellfish—pot	1,533	13.
AK finfish—pot	226	None Documented.
WA, OR, CA sablefish-pot.	176	4, 6.
WA, OR, CA dungeness crab.	1,426	4, 6, 30, 32.
WA, OR shrimp—pot.	231	None Documented.
CA lobster, prawns, shrimp, rock crab, fish—pot.	608	None Documented.
OR, CA hagfish	7	None Documented.
HI lobster—trap	21	12.
HI crab—trap	5	None Documented.
HI fish—trap	2	None Documented.
HI shrimp—trap	2	None Documented.
HI other—trap	6	None Documented.
Handline and Jig Fisheries:		
AK North Pacific halibut.	69	None Documented.
AK other finfish	33	None Documented.
WA groundfish, bottomfish.	679	4, 6.
HI aku boat, pole and line.	17	None Documented.
HI inshore handline	76	20.
HI deep sea bottomfish.	434	12, 20.
HI tuna	144	12, 20, 21.
Guam bottomfish	<50	None Documented.

TABLE 3.—CATEGORY III COMMERCIAL FISHERIES IN THE PACIFIC OCEAN—Continued

Fishery	Estimated number of vessels/ persons	Marine mammal species involved
Commonwealth of the Northern Mariana Islands bottomfish.	<50	None Documented
American Somoa bottomfish.	<50	None Documented
Dip Net Fisheries:		
WA, OR smelt, herring.	119	None Documented.
Harpoon Fishery:		
CA swordfish	228	None Documented.
Pound Fisheries:		
AK, Prince William Sound herring spawn on kelp.	81	2.
AK Southeast Alaska herring food/bait.	1	None Documented.
WA herring—brush weir.	1	None Documented.
WA herring spawn on kelp.	4	None Documented.
Bait Pens:		
WA, OR herring	12	6.
Dredge Fishery:		
Coastwide scallop	106	None Documented.
Dive, Hand/ Mechanical Collection Fisheries:		
AK abalone	23	None Documented.
AK dungeness crab.	3	None Documented.
AK herring spawn on kelp.	172	None Documented.
AK urchin and other fish/ shellfish.	19	None Documented.
AK clam hand shovel.	64	None Documented.
AK clam mechanical/ hydraulic fisheries.	3	None Documented.
WA geoduck	37	4.
WA, OR sea urchin, other clams, octopus, oysters, sea cucumbers, scallops.	647	2, 6.
CA abalone	129	None Documented.
CA sea urchin	800	None Documented
HI squiding, spear	49	None Documented.
HI lobster diving	16	None Documented.
HI coral diving	2	None Documented.
HI handpick	86	None Documented.
Aquaculture, Ranch, Ponds:		
WA tribal salmon ranch.	1	None Documented.
WA oyster farm	316	None Documented.
WA mussel/clam	224	None Documented.
WA, CA kelp	4	None Documented.
HI fish pond	3	None Documented.
Commercial Passenger Fishing Vessel (Charter Boat) Fisheries:		
AK, WA, OR, CA all species.	1243	3, 6.
Other Fisheries:		
HI	17	None Documented.

TABLE 4.—CATEGORY I COMMERCIAL FISHERIES IN THE ATLANTIC OCEAN

Fishery	Estimated number of vessels/ persons	Marine mammal species involved
Trawl Fishery:		
SNE, MDA Foreign mackerel.	15	16, 20, 22, 23, 34.
Gillnet Fisheries:		
GME groundfish/ mackerel.	140	6, 15, 23, 31, 32, 34, 35, 38

TABLE 5.—CATEGORY II COMMERCIAL FISHERIES IN THE ATLANTIC OCEAN AND GULF OF MEXICO

Fishery	Estimated number of vessels/ persons	Marine mammal species involved
Trawl Fisheries:		
SNE, MDA offshore squid.	20	16,22,23,34
SNE, MDA Atlantic mackerel.	200	16,23
Longline:		
Atlantic Ocean and GMX tuna, shark, swordfish.	820	16,22,23,24,27, 31,32,36

TABLE 6.—CATEGORY III COMMERCIAL FISHERIES IN THE ATLANTIC OCEAN AND GULF OF MEXICO

Fishery	Estimated number of vessels/ persons	Marine mammal species involved
Trawl Fisheries:		
GME northern shrimp.	320	None Documented.
GME mackerel	30	None Documented.
GME, SNE groundfish.	1,052	None Documented.
GME, SNE sea scallops.	215	None Documented.
GME, SOA, GMX coastal herrings.	5	36.
SNE, MDA inshore squid.	100	None Documented.
SNE, MDA mixed species.	>1,000	None Documented.
SOA, GMX shrimp	18,292	20,40
GMX butterfish	5	36
GA, SC whelk	25	None Documented.
Calico scallops	200	None Documented.
Bluefish, croaker, flounder.	550	None Documented.
Crab	400	None Documented.
Pursue Seine:		
GME Atlantic herring.	30	6, 15, 35.
GME, SNE, MDA menhaden.	10	20.
GME, SNE, MDA Atlantic bluefin tuna.	5	31.
SOA, GMX menhaden.	97	20.
FL west coast sardines.	16	20.
Bottom Longline/ Hook & Line:		
GME tube trawl groundfish.	46	6, 35.
SOA, GMX snapper-grouper and other reef fish.	1,300	None Documented.
Pelagic Hook & Line/ Harpoon/Gillnet:		
GME, SNE, MDA tuna, shark, swordfish.	26,223	None Documented.
SOA, GMX	1,446	None Documented.
Gillnet:		
GME, SNE, MDA, SOA coastal shad, sturgeon.	4,515	15, 20, 32.
SOA, GMX coastal	4,000	20.
FL east coast, GMX pelagics king & spanish mackerel.	271	20.
FL east coast shark.	24	20.
Fixed Gear Fisheries Trap/Pot—Fish:		
GME, SNE, MDA mixed species.	100	6, 15, 31, 32, 35.
MDA black sea bass.	30	None Documented.
MDA eel	500	None Documented.

TABLE 6.—CATEGORY III COMMERCIAL FISHERIES IN THE ATLANTIC OCEAN AND GULF OF MEXICO—Continued

Fishery	Estimated number of vessels/ persons	Marine mammal species involved
Fixed Gear Fisheries Trap/Pot—Lobster, Crab:		
GME, SNE inshore lobster.	10,613	6, 31, 32, 38, 39.
GME, SNE offshore lobster.	2,902	None Documented.
Atlantic Ocean, GMX blue crab.	20,500	20, 40.
SOA, GMX, CB spiny lobster.	2,500	20, 40.
SOA, GMX, CB reef fish.	2,200	None Documented.
FL east & west coast, GMX stone crab.	500	20, 40.
Stop Seine, Weirs (Staked Fish Traps):		
GME herring and Atlantic mackerel.	50	6, 15, 31, 32, 35, 38.
SNE, MDA mixed species.	500	None Documented.
MDA crab	2,600	None Documented.
Dredge Fisheries:		
GME, SNE sea scallops.	233	31.
SNE, MDA offshore clam.	159	None Documented.
GME mussel	>50	None Documented.
MDA oyster	7,000	None Documented.
Haul Seine:		
SOA, CB	150	None Documented.
Beach Seine:		
CB	15	40.
Aquaculture, Pens:		
GME Atlantic salmon.	30	6, 35.
Dive. Hand/ Mechanical Collection Fisheries:		
GME urchins	<50	None Documented.
Atlantic Ocean, GMX, CB shellfish.	20,000	None Documented.

List of State Abbreviations Used in Tables

AK—Alaska
CA—California
FL—Florida
GA—Georgia
HI—Hawaii
OR—Oregon
SC—South Carolina
TX—Texas
WA—Washington

Acronyms and the Areas They Represent

GME—Gulf of Maine—Canadian Border to Nantucket Island, Massachusetts (includes Georges Bank)
SNE—Southern New England—Nantucket Island, Massachusetts to New York (Hudson Canyon)
MDA—Mid Atlantic—New Jersey to Cape Hatteras, North Carolina
SOA—Southern Atlantic—South Carolina to Florida
GMX—Gulf of Mexico—All Gulf States
CB—Caribbean

Explanation of Columns

Fishery—Identified by gear, target species, and area.
Estimated number of Vessels/Persons—Contains the best and most recent available information on the number of vessels/persons licensed to participate in a fishery or, in the case of Alaska, the number of permits used.
Marine Mammal Species Involved—Contains a list of all documented or reported instances (including rare and unique instances) of marine mammal interactions. The inclusion of a species does not address the magnitude of take and makes no statement regarding the significance of any interaction.

SPECIES CODES FOR MARINE MAMMAL TAKEN IN COMMERCIAL FISHERIES

Species codes	Common name	Scientific name
1.	Northern fur seal	*Callorhinus ursinus.*
2.	Steller (Northern) sea lion.	*Eumetopias jubatus.*
3.	California sea lion	*Zalophus californianus.*
4.	Unidentified sea lion.	.
5.	Walrus	*Odobenus rosmarus.*
6.	Harbor seal	*Phoca vitulina.*
7.	Spotted seal	*Phoca larga.*
8.	Ringed seal	*Phoca hispida.*
9.	Ribbon seal	*Phoca fasciata.*
10.	Bearded seal	*Erignathus barbatus.*
11.	Northern elephant seal.	*Mirounga angustirostris.*
12.	Hawaiian monk seal	*Monachus schauinslandi.*
13.	Alaska sea otter	*Enhydra lutris lutris.*
14.	Dall's porpoise	*Phocoenoides dalli.*
15.	Harbor porpoise	*Phocoena phocoena.*
16.	Common (Saddleback) dolphin.	*Delphinus delphis.*
17.	Pacific whitesided dolphin.	*Lagenorhynchus obliguidens.*
18.	Northern right whale dolphin.	*Lissodelphis borealis.*
19.	Striped dolphin	*Stenella coeruleoalba.*
20.	Bottlenose dolphin	*Tursiops truncatus.*

SPECIES CODES FOR MARINE MAMMAL TAKEN IN COMMERCIAL FISHERIES—Continued

Species codes	Common name	Scientific name
21.	Rough toothed dolphin.	*Steno bredanensis.*
22.	Risso's dolphin	*Grampus griseus.*
23.	Pilot whale	*Globicephala melaena.*
24.	False killer whale	*Pseudorca crassidens.*
25.	Killer whale	*Orcinus orca.*
26.	Beluga whale	*Delphinapterus leucas.*
27.	Unidentified small cetacean.	.
28.	Sperm whale	*Physeter catodon.*
29.	Beaked whales	*Ziphiidae.*
30.	Gray whale	*Eschrichtius robustus.*
31.	Humpback whale	*Megaptera novaeangliae.*
32.	Minke whale	*Balaenoptera acutorostrata.*
33.	Unidentified large cetacean.	.
34.	Atlantic whitesided dolphin.	*Lagenorhynchus acutus.*
35.	Gray seal	*Halichoerus grypus.*
36.	Spotted dolphin	*Stenella* spp.
37.	Pygmy sperm whale	*Kogia breviceps.*
38.	Northern right whale	*Eubalaena glacialis.*
39.	Fin whale	*Balaenoptera physalus.*
40.	Manatee	*Trichechus manatus.*
41.	Southern (California) sea otter.	*Enhydra lutris neries.*

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Dated: April 14, 1989.

James E. Douglas, Jr.,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

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Federal Register

Thursday
April 20, 1989

Part IV

National Science Foundation

Draft Program Guidelines; Notice

NATIONAL SCIENCE FOUNDATION

Draft Program Guidelines

AGENCY: National Science Foundation.

ACTION: Notice.

SUMMARY: The Academic Research Facilities Modernization Act of 1988, (102 Stat. 2873, 42 U.S.C. 1862a-1862d), calls for the National Science Foundation (NSF) to develop draft Program Guidelines and publish them in the **Federal Register** for review and comment. Comments on the proposed Guidelines will be considered by NSF in developing the Program Guidelines which will be included in a report to Congress due June 15, 1989.

Note: Funds are not available for this proposed program in FY 89 and none have been included in the FY 90 budget request to the Congress. Furthermore, funding for this program is not included in the Administration or Foundation plans for doubling the NSF budget by FY 93.

DATES: Comments are due on or before May 22, 1989.

ADDRESS: Comments on the Guidelines should be submitted to: Research Facilities Office, National Science Foundation, 1800 G Street, NW., Room 1240, Washington, DC 20550.

FOR FURTHER INFORMATION CONTACT: Altie H. Metcalf, Staff Assistant, Research Facilities Office, National Science Foundation, 202-357-9785.

SUPPLEMENTARY INFORMATION:

Academic Research Facilities Modernization Program, Program Guidelines

Background

The Academic Research Modernization Program was established by the National Science Foundation Authorization Act of 1988 (102 Stat. 2873, 42 USC 1862a–1862d) to assist in modernizing and revitalizing the Nation's research facilities. The Program will be carried out through projects which involve the repair, renovation, or, in exceptional cases, replacement of specific science and engineering research facilities at eligible organizations.

Goals

The goals of the Academic Research Facilities Modernization Program are to:

- Promote the modernization of graduate and undergraduate academic science and engineering research laboratories and related facilities at institutions of higher education, independent nonprofit research institutions, research museums, and consortia thereof.
- Assist those academic institutions that historically have received relatively little Federal research and development funds to improve their academic science and engineering infrastructures and broaden and strengthen the Nation's science and engineering base.

Scope

The purpose of the program is to repair or renovate, or, in exceptional cases, replace science or engineering research facilities. It is *NOT* the intent of the program to fund construction or renovation of: (1) New facilities; (2) facilities not devoted to scientific or engineering research; (3) major, highly specialized research facilities, such as research vessels, airplanes, telescopes or supercomputer centers; or (4) facilities used in fields of research not normally funded by NSF, e.g. biomedical research with disease-related goals; nor is it intended to fund: (5) the operation and maintenance of facilities; or (6) non-fixed laboratory equipment or instrumentation.

Definitions

The following definitions apply specifically to the Academic Research Facilities Modernization Program and these program guidelines:

Institution: A separate legal and fiscal entity, whether at the central or system level, main campus level, or branch campus level, which can receive awards and which is separately and consistently identified at that level for federal research and development reporting purposes.

Institutions of Higher Education: Institutions legally authorized and accredited at the college level by a nationally recognized accrediting agency to offer and which are offering at least a two-year program of college-level studies leading toward a degree.

Independent Nonprofit Research Institutions: Independent legal entities, other than institutions of higher education, which are generally recognized as separately incorporated, nonprofit, tax exempt organizations, and which conduct research as one of their primary purposes.

Research Museums: Independent nonprofit science museums, zoological parks, aquaria, natural history museums, etc., which conduct research as one of their primary purposes.

Consortia: Recognized groups consisting exclusively of two or more eligible organizations. For the purposes of evaluation and review, a consortium will be identified with the organization where the facility proposed for renovation is located.

Research Facilities: The physical plant in which sponsored or non-sponsored research activities (including research training) take place, including related infrastructure and systems (e.g., HVAC and power systems, toxic waste removal systems), and fixed equipment (e.g., clean rooms, fume hoods). This includes all or parts of buildings in which research activities take place some percentage of the time.

Repair: Fixing existing research facilities or otherwise putting them in a usable, adequate and acceptable condition.

Renovation: The renewing, restoring, upgrading, updating, or modernizing of existing research facilities.

Replacement: Taking the place of an existing research facility which is beyond repair or for which renovation is not cost-effective. Replacement includes, but is not limited to: razing an existing research facility and constructing one in its place; and relocating or consolidating existing research facilities.

Research Training: Training of individuals in research techniques where such activities utilize the same facilities as research activities, and where these research activities are not a part of the instruction function of the institution. Research training does not include general science or engineering training or instruction whether in a classroom or instructional laboratory.

Minority Institutions: Historically Black colleges and universities and other institutions whose enrollments are: (a) more than 50 percent of a combination of any of the following groups: Alaskan Native (Eskimo or Aleut), American Indian, Black, Mexican American, Puerto Rican, or Native Pacific Islander; or (b) 20 percent of more of any one of the above eligible minorities.

Eligible Organizations

Proposals may be submitted by institutions of higher education, independent nonprofit research institutions, research museums, and consortia thereof. Proposals must be either for the renovation of one facility (single or multi-disciplinary) or for the renovation of facilities within one discipline.

Eligible Fields of Science

Proposals will be considered for research facilities used for any field of science, mathematics and engineering ordinarily supported by the National Science Foundation, including astronomy, atmospheric sciences, biological and behavioral sciences.

chemistry, computer sciences, earth sciences, engineering, information science, materials research, mathematical sciences, oceanography, physics, and social sciences.

Matching Requirements

Organizations must propose matching or cost-sharing at the level of at least 50% of total eligible project costs. The matching or cost-sharing may be from any private or non-Federal public source and may be in cash or in kind, fairly evaluated (see OMB Circular A-110, Attachment E).

Proposals

Proposals are limited to one per eligible organization per proposal cycle. In addition, an eligible organization may participate in one consortium proposal each proposal cycle.

In order to help simplify and facilitate proposal preparation and processing and to help manage the proposal evaluation process efficiently and effectively, the program is conducted in two phases. This two phase process requires organizations to submit proposals in the first phase without detailed specifications or construction plans. It also enables the Foundation to select those Phase I proposals which are most competitive to determine which organizations will be invited to submit a more detailed proposal for the second phase of competition.

Phase I Proposals

Phase I proposals are directed at describing the current research activities, the research facility problem and the proposed repair or renovation project. Phase I proposals should be brief, direct, and concise.

The following elements should be addressed:

1. *Description of the Research Facility and Limitations.* Identify and describe the research facility including its nature, location, size, configuration, purpose, age, and condition. Discuss the adequacy, limitations, and constraints of the facility. Provide an estimate of the percentages of time or space or combination thereof the facility is used for research and research training.

2. *Research Activities.* Describe the type(s) of research and research training being conducted in the research facility. Identify by number and types (e.g., senior personnel, postdocs, graduate students, undergraduate students) the personnel using the facility for research and research training on a regular basis.

3. *Project and Management Plans.* Describe the scope, extent, type, and nature of the proposed repair/renovation/replacement project. If the project is for replacement, describe, why it is necessary and why repair or renovation is inappropriate.

Describe the management organization for the conduct of the project. Specify the key manager for the project and relevant experience. State the overall schedule for completion of the project.

4. *Project Impacts.* Describe how the repair/renovation/replacement will contribute to improving the organization's research and research training capabilities, improving the academic science and engineering infrastructure, and broadening and strengthening the Nation's science and engineering base.

5. *Budget and Funding.* On the budget form provided, indicate the estimated total eligible project costs and the amount and percentage NSF is being asked to fund. Identify the expected sources of matching funds.

Note: Eligible project costs are those total project costs properly and reasonably allocable to the research facility portion of the project based on the percentage of time or space or combination thereof that the facility is used for research and research training. Eligible project costs may include: A&E services, surveys, testing, inspections, relocation, demolition, removal, construction, fixed equipment, and related engineering management costs. Indirect costs of the proposing organization are not allowed. Costs incurred prior to the effective date of an award under this program are not eligible project costs.

Length

Five (5) single-spaced, standard size, typewritten pages, excluding the cover sheet and budget (no attachments are permitted.

Where to Submit

Ten (10) copies of the Phase I proposal should be submitted to the following address: Proposal Processing Unit, Room 233, National Science Foundation, 1800 G Street, NW., Washington, DC 20550, Attn: Research Facilities/Phase I Proposal.

Deadlines and Training

October 15 annually. Approximately three months after submission of Phase I proposals, proposers will be notified as to the status of their proposals. Proposers either will be invited to submit a Phase II proposal or their proposal will be declined.

Phase II Proposals

Only those who submitted a Phase I proposal and are invited to submit a Phase II proposal are eligible to compete in Phase II. In addition to the *NSF Cover Page*, indicating the proposal number assigned to the Phase I proposal, and the *Table of Contents*, containing page numbers of the major sections of the proposal, Phase II proposals should address all of the information required in Phase I in greater detail, as appropriate, and in addition address the following requirements:

1. *Description of the Research Facility and Limitations.* Describe in detail the adverse impact the limitations have on the quality of research and research training performed by those who utilize the facility. Indicate the percentage of time or space or combination thereof the facility is used for research and research training and how the percentage was determined.

2. *Research Activities.* Describe the research activities and projects being conducted in the research facility and sources of support, if any. Identify the senior personnel using the facility for research, and for each provide a brief biographical sketch and list up to five recent publications most relevant to the research being conducted in the research facility.

3. *Project and Management Plans.* Provide detailed plans on the proposed repair/renovation/replacement. Explain who will do the work, e.g., in-house personnel or competitive contracting. One set of complete drawings and specifications should be provided as an appendix to the Phase II proposal.

Provide detailed schedules for the conduct of the project from the time of project approval to project completion. Discuss the relationship to o her organizational facility plans and activities, the expected use of experts, plans for continuing current research activities during the renovation phase, and other relevant plans. Also indicate plans for the operation/maintenance of the facility.

4. *Project Impacts.* Describe how the upgraded facility will contribute to meeting the research needs of the organization, the region, and the nation. Discuss the potential of the improved facility to contribute to the improvement of the quality, distribution and effectiveness of the Nation's research and education capabilities. Indicate how the project will attract researchers and students and contribute to increasing the number of students entering the pipeline leading to advanced degrees in science and engineering and improving the quality of their education.

5. *Budget and Funding.* Provide a detailed budget of total eligible project costs, by categories, on the budget form provided. Specify the expected sources of cost-shared or matching funds (e.g., state appropriations, endowment, debt

financing); the plans for obtaining such matching; and when such cost-sharing or matching will be available.

Note: Eligible project costs are those total project costs properly and reasonably allocable to the research facility portion of the project based on the percentage of time or space or combination thereof that the facility is used for research and research training. Eligible project costs may include: A&E services, surveys, testing, inspections, relocation, demolition, removal, construction, fixed equipment, and related engineering management costs. Indirect costs of the proposing organization are not allowed. Costs incurred prior to the effective date of an award under this program are not eligible projects costs.

6. *Previous Federal Awards*—Identify by agency, purpose, year, and amount any federal awards received for the repair, renovation, construction, or replacement of academic facilities in the previous five years.

Length

Fifteen (15) single-spaced, standard size, typewritten pages, excluding the cover sheet and budget. One set of complete drawings and specifications should be provided as an appendix.

Where to Submit

Fifteen (15) copies of the Phase II proposal should be submitted directly to the Research Facilities Office at the following address: Research Facilities/ Phase II Proposal, Room 1240, National Science Foundation, 1800 G Street, NW., Washington, DC 20550.

Deadlines and Timing

May 1 annually. Phase II proposals must be submitted in the Phase II cycle immediately following submission of the Phase I proposal.

Review and Selection

For the purposes of competition, review, evaluation, and final rankings, Phase I and Phase II proposals will be separated into three different groups based on the average amount of NSF research and development funds received by the proposing organization in the previous three fiscal years (as determined by NSF).

- Group I consists of those organizations that have received an average of $2 million or more;
- Group II consists of those organizations that have received an average of less than $2 million but equal to or greater than $400,000;
- Group III consists of those organizations that have received an average of less than $400,000.

(Appendix A indicates the organizations in Groups I and II. Organizations not identified in I or II may assume they are in Group III, unless otherwise advised by NSF. Inclusion on the listing does not necessarily mean an organization is eligible under this program; see the section on "Eligible Organizations," above.)

Phase I and Phase II proposals will be evaluated on the basis of merit review. Reviews may include staff reviews, ad hoc mail reviews, panel reviews, and site visits. Outside reviewers will be broadly representative of the various types of eligible organizations.

Evaluation criteria will include:

1. *Research Merit.* Consideration of the existing research (and research training) activities and assessment of the impact the facility renovation/ repair/replacement project will have on the overall quality and significance of the current and expected research and research training activities carried out in the facility.

2. *Facility Need.* The adequacy and appropriateness of the facility for current and expected research activities and research training, as well as any demonstrated need based on age and condition analysis.

3. *Infrastructure Contribution.* The contribution of the project toward:

(a) The future research (including research training needs of the Nation and the research mission of the Foundation;

(b) Meeting national, regional, and organizational research and related training needs;

(c) Improving the organization's academic scientific and engineering infrastructure and broadening the Nation's science and engineering base; and

(d) Improving the quality, distribution, or effectiveness of the Nation's scientific and engineering research and education capabilities.

4. *Plans and Funding.* The qualifications and experience of the project director to plan, lead, and manage the project. The technical soundness of the proposed plans and approach. The reasonableness and appropriateness of the costs and budget, matching, and organizational and management plans.

The first three criteria are of approximately equal weight. The last criterion, while of lesser weight than each of the first three, is of critical importance, and projects must be acceptable in this area in order to be funded.

Additional Considerations

In addition to the four evaluation criteria stated above, NSF must, by law, consider the following factor in making awards under this program:

- Equitable distribution of funds among organizations of different sizes and geographic locations;
- The extent to which an organization has received awards for the repair, renovation, construction, or replacement of academic facilities from any other Federal funding source within the 5-year period immediately preceding the application; and
- A minimum 12% of the funds available under this program must go to Minority Institutions as defined in this Program Announcement.

In making final decisions on awards, NSF will give additional consideration to proposals offering significantly higher percentages of matching or cost-sharing than the minimum required under the program.

Awards

NSF award amounts may range from $100,000 to $7 million. Total awards under this program to any eligible organization shall not exceed $7 million during any five year period.

NSF awards may be made contingent on the awardee obtaining the required matching or cost-sharing within a certain time period. However, NSF award funds cannot be expended until required matching or cost-sharing commitments have been met. The duration of NSF awards is not expected to exceed two years. Awards and supported projects may be subject to certain federal or other standards, codes, regulations, or requirements.

ATTACHMENT A

Group I Organizations

Arizona State University
Boston University
Brandeis University
Brown University
California Institute of Technology
Carnegie-Mellon University
Case Western Reserve University
Children's TV Workshop
Colorado State University
Columbia University
Consortium for Scientific Computing
Cornell University
CUNY-City College
Dartmouth College
Drexel University
Duke University
Florida State University
Georgia Institute of Technology—All Campuses
Harvard University
Indiana University—All Campuses
Iowa State University of Science & Technology
Johns Hopkins University
Joint Oceanographic Institutions, Inc.
Lehigh University
Louisiana State University—All Campuses
Massachusetts Institute of Technology
Mathematical Sciences Research Institute

Michigan State University
National Academy of Sciences
New York University
North Carolina State University—Raleigh
Northeastern University
Northwestern University
Ohio State University—All Campuses
Oregon State University
Pennsylvania State University—All Campuses
Princeton University
Purdue University—All Campuses
Rensselaer Polytechnic Institute
Rice University
Rutgers State University of New Jersey
SRI International
Stanford University
SUNY—Albany
SUNY—Buffalo
SUNY—Stony Brook
Syracuse University—All Campuses
Texas A&M University—All Campuses
University of Alaska—Fairbanks
University of Arizona
University of California—Berkeley
University of California—Davis
University of California—Irvine
University of California—Los Angeles
University of California—Riverside
University of California—San Diego
University of California—Santa Barbara
University of California—Santa Cruz
University of Chicago
University of Cincinnati—All Campuses
University of Colorado
University of Connecticut
University of Delaware
University of Florida
University of Georgia
University of Hawaii—Manoa
University of Houston
University of Illinois—System Office
University of Illinois—Urbana
University of Iowa
University of Kansas
University of Kentucky
University of Maryland—College Park
University of Massachusetts—System Office
University of Michigan
University of Minnesota
University of Missouri—Columbia
University of Nebraska—Lincoln
University of New Mexico
University of North Carolina—Chapel Hill
University of Notre Dame
University of Oklahoma
University of Oregon
University of Pennsylvania
University of Pittsburgh
University of Rhode Island
University of Rochester
University of South Carolina—All Campuses
University of Southern California
University of Tennessee—Knoxville
University of Texas—Austin
University of Utah
University of Virginia
University of Washington
University of Wisconsin—Madison
University of Wyoming
Utah State University
Vanderbilt University
Virginia Polytechnic Inst & State University
Washington State University
Washington University
Woods Hole Oceanographic Institute
Yale University

Group II Organizations

American Association of Physics Teachers
American Mathematical Society
American Statistical Association
American University
Auburn University—All Campuses
Baylor College of Medicine
Boston College
Brigham Young University—All Campuses
California State Univ., Fullerton
California State Univ., Los Angeles
Carnegie Institution of Washington
Catholic University of America
Clarkson University
Clemson University
Cold Spring Harbor Lab
College of William and Mary
Colorado School of Mines
Columbia University Teachers College
Center for Advanced Study Behavioral Science
CUNY—Brooklyn College
CUNY—Hunter College
CUNY—Mount Sinai School of Medicine
CUNY—Queens College
DOSECC, Inc.
Education Development Center
Emory University
Field Museum of Natural History
Franklin Institute—Bartol Research Foundation
George Washington University
Georgetown University
Georgia State University
Howard University
Illinois Institute of Technology
Institute for Cancer Research
Kansas State University of Ag & Applied Science
Kent State University—All Campuses
Marine Biological Lab
Marquette University
Medical University of South Carolina
Meharry Medical College
Miami University—All Campuses (OH)
Michigan Technological University
Missouri Botanical Garden
Montana State University
N E Research Foundation
National Opinion Research Center
National Public Radio
National Bureau of Economic Research, Inc.
National Science Teachers Association
N E Radio Observatory Center
New Mexico Institute of Mining & Technology
New Mexico State University—All Campuses
New York Botanical Garden
Northern Arizona University
Northern Illinois University
Ohio University—All Campuses
Oklahoma State University
Old Dominion University
Oregon Graduate Center
Polytechnic University
Portland State University
Rand Corporation
Rockefeller University
Saint Louis University
San Diego State University
San Jose State University
Scripps Clinic and Research Foundation
South Dakota School of Mines
Southern Illinois University
Southern Methodist University
SUNY—Binghamton
Swarthmore College
Technical Education Research Center
Temple University
Texas Tech University
Tufts University
Tulane University of Louisiana
University of Akron—All Campuses
University of Alabama
University of Alabama—Birmingham
University of Alabama—Huntsville
University of Arkansas—Fayetteville
University of California—San Francisco
University of Denver
University of Idaho
University of Illinois—Chicago
University of Maine—Orono
University of Maryland—Baltimore
University of Medicine & Dentistry of New Jersey
University of Mississippi
University of Missouri-Rolla
University of Nevada—Reno
University of New Hampshire
University of Puerto Rico—Mayaguez
University of South Florida
University of Southern Mississippi
University of Texas—Dallas
University of Texas—Health Science Center Dallas
University of Texas—Health Science Center San Antonio
University of Toledo
University of Tulsa
University of Vermont
University of Wisconsin—Milwaukee
Virginia Commonwealth University
Wayne State University
Wesleyan University
West Virginia University
Worcester Polytechnic Institute
Yeshiva University

William B. Cole, Jr.,

Executive Officer, Research Facilities Office, National Science Foundation.

[FR Doc. 89-9482 Filed 4-19-89; 8:45 am]

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federal register

Thursday
April 20, 1989

Part V

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Part 46

Federal Acquisition Regulation (FAR); Inspection for Commercial Off-the-Shelf Supplies (Quality Assurance); Proposed Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 46

Federal Acquisition Regulation (FAR); Inspection for Commercial Off-the-Shelf Supplies (Quality Assurance)

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulatory Council are considering changes to FAR Part 46, Quality Assurance, to more clearly define under what circumstances the Government should rely on inspection and testing by contractors when acquiring commercial or off-the-shelf supplies.

DATE: Comments should be submitted to the FAR Secretariat at the address shown below on or before June 19, 1989, to be considered in the formulation of a final rule.

ADDRESS: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets, NW., Room 4041, Washington, DC 20405.

Please cite FAR Case 89–21 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Margaret A. Willis, FAR Secretariat, Room 4041, GS Building, Washington, DC 20405, (202) 523–4755.

SUPPLEMENTARY INFORMATION:

A. Background

FAR 46.203 provides general criteria for selecting which quality requirements shall be applicable to a particular contract. The criteria to be considered include the technical description of the item, its complexity, and its intended application. Based on these criteria, Government reliance on contractor performed inspection and testing would be sufficient for many procurements of commercial or off-the-shelf supplies. However, FAR 46.301 and 46.302 indicate that Government inspection of such supplies is required when a procurement is expected to exceed the small purchase limit, without regard to the complexity or intended application of the supplies.

The proposed changes to the FAR will make reliance on contractor testing and inspection for commercial or off-the-shelf supplies the general rule, with standard inspection or higher-level quality requirements being the exception.

B. Regulatory Flexibility Act

The rule, which concerns inspection and testing by contractors when acquiring commercial or off-the-shelf supplies, does not change existing policy on the subject; it merely clarifies such policy. Consequently, the rule will not, if promulgated, have a significant impact on a substantial number of small entities. Therefore, an Initial Regulatory Flexibility Analysis has not been prepared. Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected FAR Subpart will also be considered in accordance with section 610 of the Act. Such comments must be submitted separately and cite CASE 89–610 (FAR Case 89–21) in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 96–511) is deemed to apply because the proposed rule contains information collection requirements. Accordingly, a request for review and approval of a currently approved information collection requirement concerning Quality Assurance, and assigned OMB 9000–0077 control number, is being submitted to the Office of Management and Budget under 44 U.S.C. 3501, et seq. Public comments concerning this request will be invited through a subsequent **Federal Register** notice.

List of Subjects in 48 CFR Part 46

Government procurement.

Dated: April 12, 1989.

Harry S. Rosinski

Acting Director, Office of Federal Acquisition and Regulatory Policy.

Therefore, 48 CFR Part 46 is amended as set forth below:

1. The authority citation for 48 CFR Part 46 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. Chapter 137; and 42 U.S.C. 2473(c).

PART 46—QUALITY ASSURANCE

2. Section 46.202-1 is amended by revising paragraph (a) to read as follows:

46.202–1 Government reliance on inspection by contractor.

(a) Except as specified in paragraph (b) of this subsection, the Government shall rely on the contractor to accomplish all inspection and testing needed to ensure that (1) supplies or services acquired under small purchases, and (2) commercial or off-the-shelf supplies acquired under fixed-price contracts, conform to contract quality requirements before they are tendered to the Government (see 46.301).

* * * * *

3. Section 46.301 is revised to read as follows:

46.301 Contractor inspection requirements.

(a) Except as specified in paragraph (b) of this section, the contracting officer shall insert the clause at 52.246–1, Contractor Ispection Requirements, in solicitations and contracts—

(1) For commercial or off-the-shelf supplies, regardless of dollar amount, when a fixed-price contract is contemplated; and

(2) For other than commercial or off-the-shelf supplies, when the contract amount is expected to be within the small purchase limitation; and

(i) Inclusion of the clause is necessary to ensure an explicit understanding of the contractor's inspection responsibilities; or

(ii) Inclusion of the clause is required under agency procedures.

(b) The clause at 52.246–1 shall not be used if the contracting officer has made the determination specified in 46.202–1(b).

4. Section 46.302 is revised to read as follows:

46.302 Fixed-price supply contracts.

(a) Except as specified in paragraph (d) of this section, the contracting officer—

(1) Shall insert the clause at 52.246–2, Inspection of Supplies—Fixed-Price, in solicitations and contracts for supplies, or services that involve the furnishing of supplies, when a fixed-price contract is contemplated and the contract amount

is expected to exceed the small purchase limitation; and

(2) May insert the clause at 52.246–2 in such solicitations and contracts when the contract amount is expected to be within the small purchase limitation and inclusion of the clause is in the Government's interest (see 46.203).

(b) If a fixed-price incentive contract is contemplated, the contracting officer shall use the clause with its Alternate I.

(c) If a fixed-ceiling-price contract with retroactive price redetermination is contemplated, the contracting officer shall use the clause with its Alternate II.

(d) The clause at 52.246–2 shall not be used if the clause at 52.246–1, Contractor Inspection Requirements, is used.

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